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An Introduction to Letters of Credit



AN

INTRODUCTION

TO LETTERS

OF CREDIT

*Bridging the
challenges
associated
with trade
finance*

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PREFACE

Letters of Credit are a time-tested instrument of international trade. They have been used effectively to expand markets for goods and services and to facilitate a variety of financial transactions, either as a method of payment or as a credit enhancement, within as well as across the borders of sovereign states.

Financing the flows of goods and services has become a key component of maximizing profit from trade. Letters of Credit efficiently reduce payment risk, making the task of the corporate treasury staff less difficult.

Citibank provides comprehensive cash and trade services to major global corporations and leading financial institutions. With a direct presence in more than 100 countries, Citibank's global reach and local market knowledge provide powerful leverage for our importing and exporting customers. Solutions are customized to our customers' needs, integrating Letters of Credit and other cash and trade finance alternatives to form a truly end-to-end trade proposition.

This reference booklet has been developed by Citibank professionals to provide a review of Letters of Credit and their various types and usages, with many examples of the documentation employed. A glossary of terms has been appended to familiarize anyone new to the fascinating world of trade with its unique terminology.

For more information on Citibank's products, please contact a Citibank specialist.

This booklet is not a comprehensive textbook on the subject, nor do we intend to provide sample documents that can be used as models for your business transactions, or advice on the laws or practices of any particular jurisdiction. You should consult your legal counsel or a trade expert before entering into the business transactions discussed in this publication.



LETTERS OF CREDIT

An Introduction

C H A P T E R

1

Nations, companies and individuals have engaged in trade for centuries and from the beginning have searched for the best financing alternative. Today a seller has five basic alternatives for obtaining payment for goods shipped to a buyer. Each alternative addresses certain risks for the buyer and the seller.

This chapter will compare the advantages and disadvantages of each alternative and introduce Letters of Credit.

Trade Payment Methods

1. CASH IN ADVANCE - The seller receives cash from the buyer prior to shipment.

ADVANTAGE TO BUYER

- None

ADVANTAGE TO SELLER

- Goods shipped when convenient
- Use of buyer's funds

RISK TO BUYER

- No control over the goods
- Use of the funds is lost
- Seller may refuse to ship

RISK TO SELLER

- None

3. ON CONSIGNMENT - The seller ships goods to the buyer, but retains ownership. Payment is made if and when the buyer sells the goods.

ADVANTAGE TO BUYER

- Pays only as goods are sold

ADVANTAGE TO SELLER

- Retains ownership of the goods

RISK TO BUYER

- None

RISK TO SELLER

- Limited control of goods
- Payment contingent upon sale of goods

5. LETTER OF CREDIT - This important payment method is covered in detail below and in the following chapters.

If a seller selects one of the first three payment methods, documents covering shipment of the merchandise are handled outside banking channels. The banking system is only involved in the remittance of funds. However, if the seller selects payment under a Collection or a Letter of Credit, a bank adds its service in handling documents as well as payment.

With the numerous alternative payment methods available to buyers and sellers of goods or services today, why choose a Letter of Credit as the payment vehicle? A simple answer may be that the seller will not ship without a bank's assurance of payment. While this is a major factor, Letters of Credit provide other advantages for the buyer and seller.

2. OPEN ACCOUNT - Goods are shipped to the buyer and payment is made on terms negotiated in advance with the seller.

ADVANTAGE TO BUYER

- Control over the goods
- Pays when convenient

RISK TO BUYER

- None

ADVANTAGE TO SELLER

- None

RISK TO SELLER

- No control over the goods or payment
- Buyer may refuse to pay

4. COLLECTION - The goods are shipped to the buyer. The seller's draft and documents covering the shipment are presented through the buyer's bank for payment.

ADVANTAGE TO BUYER

- May refuse to pay or accept the draft

RISK TO BUYER

- Goods may not be as represented in the documentation

ADVANTAGE TO SELLER

- Title documents controlled through the banking system

RISK TO SELLER

- Buyer may refuse to pay or accept the draft

What Is a Letter of Credit?

A Letter of Credit is an undertaking issued by a bank in favor of a Beneficiary, which substitutes the bank's creditworthiness for that of the Applicant. In a broad sense, a Letter of Credit is simply a letter of instruction issued to a Beneficiary (seller) by a Bank at the request of its customer (buyer). In a narrower sense, it is a specialized, technical instrument used to pay for a shipment of goods or services from one party to another.

Trade involves buyers and sellers seeking to exchange goods or services despite their differences in language, national custom, credit procedures, and accounting practices. Historically, merchants have sought ways of minimizing these differences and facilitating trade. The special protection and opportunities offered by Letters of Credit apply to both domestic and international trade.

Advantages to the Buyer

1. The buyer is assured that its bank will refuse payment to the seller unless the seller's documents comply with the terms and conditions of the Letter of Credit.
2. If the seller is willing to grant extended terms to the buyer, the buyer may arrange for a Letter of Credit which is payable at a future date (i.e., 60 or 90 days after presentation of complying documents). Chapter 7 (U.S. Dollar Banker's Acceptance Financing) discusses why a seller may be willing to grant extended payment terms under a Letter of Credit.
3. Through the use of Banker's Acceptances, a buyer who has purchased goods under a Letter of Credit may finance the goods until they are marketed (see Chapter 7).
4. By the documents called for, the Buyer can seek to minimize the risks in not receiving the goods ordered. The Buyer may also impose conditions on the manner and dates in which the goods are to be shipped.

Risk to the Buyer

In Letters of Credit, banks deal only with documents, not with goods. The merchandise might not be as it is represented in the documents.

Advantages to the Seller

1. The seller may rely on a bank's creditworthiness rather than the buyer's. The seller is more confident when it has a bank's commitment to pay upon presentation of complying documents.
2. The seller can reduce the risk that payment for the goods might be delayed or otherwise jeopardized by political or foreign exchange problems in the buyer's country.
3. The seller may be able to obtain financing for the purchase or manufacture of goods that will be shipped under the Letter of Credit.
4. Under Banker's Acceptance financing, the seller may receive funds shortly after shipment despite having granted credit terms to the buyer, or the seller may receive funds prior to export. The decision is typically based on the seller's cash flow position.

Risk to the Seller

1. The seller's documents must comply strictly with the terms and conditions of the Letter of Credit to entitle the seller to payment.
2. The seller is exposed to the commercial risk that the bank providing its undertaking is willing and able to perform.
3. The seller assumes any political and foreign exchange risk affecting the issuing bank's obligation.

Letters of Credit and Contracts

A sale of merchandise between a buyer and seller may be evidenced by a written or oral contract of sale. Business wisdom recommends written contracts of sale. The contract of sale establishes the method of payment. If it designates a Letter of Credit as the payment method, the buyer must apply to its bank for a Letter of Credit in favor of the seller.

The Application and Agreement for a Commercial Letter of Credit (Illustration 1, page 4), is a contractual agreement between the buyer and its bank. It is separate and distinct from the underlying contract of sale between the buyer and seller. The contract between the buyer (as Applicant) and its bank evidences the buyer's reimbursement obligation and responsibility to its bank and sets forth the terms and conditions to be included in the Letter of Credit.

The Applicant is obligated to the bank for any amount paid under the Letter of Credit. Therefore, the Applicant must use sound business judgment when entering into a contract with a party in whose favor the Letter of Credit will be issued—judgment that the Beneficiary will perform honestly, ethically and legally. The need for integrity exists in every business transaction. It is the Applicant that assumes this risk.

Citibank specialists can assist a customer in completing the Application and Agreement form. However, it remains the responsibility of the customer to establish the terms and conditions in the Letter of Credit that are satisfactory to it.

By issuing its Letter of Credit, the buyer's bank (Issuing Bank) provides a specialized form of undertaking to the Beneficiary (seller).

As such, a seller who presents documents that on

Illustration 1 – Application and Agreement for Commercial Letter of Credit¹

Application for Commercial Letter of Credit

Citibank, N.A., New York, NY 10043	Letter of Credit Reference No. _____
Attn: Letter of Credit Dept., FLA-1, 2 / A	Applicant (Name and Address)
Advising Bank (Name and Address)	
Beneficiary (Name and Address)	Amount (In specific currency): _____
	Expiry Date and Place: _____

This Application is for the issuance of a commercial letter of credit under and subject to the terms and conditions of (select one):

- ☐ The Agreement for Commercial Letter of Credit attached hereto:
☐ The Continuing Agreement for Commercial and Standby Letters of Credit dated _____. *
☐ Other (describe) _____

Subject to the following terms and conditions, please issue your irrevocable Letter of Credit (hereinafter called the "Credit") to be available by the beneficiary's draft(s):

Drawn at: ☐ Sight ☐ Days After Sight ☐ Days After Date Of: (☐ Bill of Lading ☐ Invoice)
☐ Other: _____
 Drawn on: ☐ Citibank, N.A., New York, N.Y. for _____ % invoice cost.
 Drawn on: ☐ _____ for _____ % invoice cost.
 (Name and Address of paying bank, if any)

Accompanied by the following documents which are indicated by an "X"

- ☐ Commercial invoice(s) _____ original(s) and _____ copies.
☐ Invoice(s) _____ original(s) and _____ copies (if applicable).
☐ Insurance to be effected by: ☐ Beneficiary ☐ Applicant.
☐ Insurance Policy and/or Certificate to include (list coverage): _____
☐ Transport Document (select one): ☐ Marine ☐ Multimodal
☐ Air ☐ Other (define) _____
 Dated Latest _____ issued in full set consigned (select one): ☐ To
☐ To the order of _____
 marked; Freight (select one): ☐ Collect or ☐ Paid and notify _____
☐ Other Documents (see attached listing.)

Covering: Merchandise described in the invoice(s) as (brief description): _____

* If a Continuing Agreement is already in place, submit only this Application, with customer's signature and relationship manager's approvals reflect on page 2 of this form.

¹Reimbursement agreement on the reverse is not shown

their face comply strictly with the terms of the Letter of Credit has a right to receive payment from the bank. This right is not contingent upon the seller's actual compliance with the underlying contract of sale but rather upon the bank's determination of complying documents.

Briefly summarized, there are typically three distinct agreements binding the various parties:

1. *Sales contract* – a contract between the buyer and the seller;
2. *Application and Agreement for Commercial Letter of Credit* – a contract between the Applicant (buyer) and its bank;
3. *Letter of Credit* – a specialized form of undertaking from the bank to the Beneficiary (seller).

While both Applicants and Beneficiaries benefit from the unique characteristics of a Letter of Credit, it is important for Applicants and Beneficiaries to recognize what a Letter of Credit is not:

1. It is not an unconditional guarantee of payment to anyone. A Letter of Credit assures payment to a Beneficiary only if its terms and conditions are fulfilled through the presentation of strictly complying documents. The value of such assurance ultimately depends upon the commercial stability of the bank providing its undertaking and the political and foreign exchange stability of the country in which the bank is located.
2. It is not a promise that the goods described in the presentation documents have, in fact, been delivered. Banks deal with documents, not goods/services and/or performances. The quantity and quality of goods shipped ultimately depend upon the honesty and integrity of the seller which has manufactured or packaged the goods and arranged for delivery.

At the buyer's request, the Letter of Credit may require that the seller present laboratory testing certificates or inspection certificates along with the other documents to verify the quality or quantity of goods. Since this involves some expense, the buyer and seller typically agree beforehand on the responsibility for payment of these services.

The buyer's and seller's integrity, of course, are paramount in any exchange of goods or services regardless of payment method.

The Parties

The various parties involved with a Letter of Credit are described below, using Letter of Credit terminology.

Applicant - The party that arranges for the Letter of Credit to be issued, usually the buyer or importer in a commercial transaction or the borrower in a financial transaction.

Beneficiary - The party named in the Letter of Credit in whose favor the Letter of Credit is issued, usually the seller or exporter in a commercial transaction or the creditor in a financial transaction.

Issuing Bank - The Applicant's bank that issues its undertaking to the Beneficiary in the form of a Letter of Credit.

Advising Bank - The bank, usually in the Beneficiary's country, which informs the Beneficiary that another bank has issued a Letter of Credit in its favor.

Nominated Bank - A bank named in or otherwise permitted by the terms and conditions of the Letter of Credit to receive a presentation of documents and, if it complies, to give value to the Beneficiary for the presentation against a right to obtain reimbursement from the Issuing Bank. A Nominated Bank is not obligated to act unless it also confirms the Letter of Credit.

Paying Bank - A Nominated Bank authorized to give value by paying the Beneficiary's presentation of documents. Customarily, a bank nominated to pay is also authorized to reimburse itself in advance of sending documents.

Negotiating Bank - A Nominated Bank authorized to give value by negotiating the Beneficiary's draft drawn on another, typically the Issuing Bank.

Confirming Bank - The Nominated Bank which, at the request or with the consent of the Issuing Bank, adds its own undertaking to that of the Issuing Bank.

A bank may play several roles in a single transaction, e.g. Advising and Confirming Bank.

In most export or import transactions, there are at least two banks involved—a bank in the buyer's country and a bank in the seller's country. Citibank, because of its global network, can be the bank on both sides of the transaction.





LETTERS OF CREDIT

The Language

C H A P T E R

2

This chapter will familiarize you with the language used in Letters of Credit. This language has evolved over many years and some of the terms are unique to Letters of Credit. This section will help you understand the words which may later become a standard part of your vocabulary.

Types of Letters of Credit

All Letters of Credit are issued in either a “revocable” or an “irrevocable” form and are either “confirmed” or “unconfirmed.” They should be read carefully to determine who must or, at its option, may receive a presentation or give value under a Letter of Credit for a presentation made to it or to another.

Revocable versus Irrevocable

The Applicant (buyer), usually with the prior agreement of the Beneficiary (seller), requests its bank to issue the Letter of Credit in either a revocable or irrevocable form. A Revocable Letter of Credit may be amended or canceled by the Issuing Bank at any time with or without prior notice to, or agreement of, the Beneficiary. An Irrevocable Letter of Credit cannot be amended or canceled without the agreement of the Issuing Bank, the Confirming Bank (if the Letter of Credit is confirmed), and the Beneficiary.

Illustration 2 on page 9 depicts a revocable letter of credit. In its function, the Revocable Letter of Credit is not an assurance of payment, but rather provides the buyer and the seller with a means of settling payments.

Because a Revocable Letter of Credit may be canceled or amended without prior notice to the Beneficiary, the Beneficiary should not depend on a Revocable Letter of Credit for financial protection. The Beneficiary must have faith that the Applicant will abide by the underlying contract of sale or other agreement, and will not instruct the Issuing Bank to revoke its Letter of Credit.

The convenience afforded the Beneficiary under a revocable letter of credit is that payment to the Beneficiary will be made by the bank nominated to pay in the Letter of Credit and on which the draft is drawn (Paying Bank), provided that the documents comply strictly with the Letter of Credit and that the Letter of Credit has not been revoked.

Once the payment is made by the Paying Bank, the obligation of the Issuing Bank to reimburse the Paying Bank, if not previously revoked, becomes irrevocable. The Paying Bank is thus protected and will receive funds from the Issuing Bank in accordance with the Letter of Credit.

An Irrevocable Letter of Credit is a definite undertaking by the Issuing Bank to pay, provided the Beneficiary complies strictly with the Letter of Credit. The Letter of Credit cannot be amended or canceled

without the consent of the Issuing Bank, the Confirming Bank (if the Letter of Credit is confirmed) and the Beneficiary.

Illustration 3 on page 10 depicts an Irrevocable Letter of Credit. Citibank’s obligation to pay is set forth at the bottom of the undertaking. The Beneficiary holds the undertaking of Citibank (in addition to that of the Applicant), but does not hold the undertaking of any other bank.

Confirmed versus Unconfirmed

When using a Letter of Credit, it is important to know which bank is giving its irrevocable undertaking. Some Advising Banks attach a letter (Illustration 4 as shown on page 11) to the Issuing Bank’s Letter of Credit stating whether the Advising Bank is merely advising or is advising and also confirming the Letter of Credit. Other Advising Banks advise the irrevocable undertaking of an overseas Issuing Bank to the Beneficiary by incorporating it into the text of the Advising Bank’s advice as shown on page 13 (Illustration 5).

If the Advising Bank is merely advising, the advice, whether it attaches or incorporates the overseas issuing banks undertaking, will likely bear a notation by such Advising Bank that it makes “no engagement” or words to that effect.

An unconfirmed Advice of a Correspondent Bank’s Irrevocable Letter of Credit is shown in Illustration 4 on page 11. Beneficiaries of such advices are dependent on the commercial stability of the Issuing Bank and the political and foreign exchange stability of the country in which the Issuing Bank is located. Beneficiaries are not always willing to rely on the stability of an Issuing Bank—particularly when that bank is in another country or is unknown to the Beneficiary. Consequently, a Beneficiary may request that the Applicant instruct the Issuing Bank to have its Irrevocable Letter of Credit confirmed by a bank in the Beneficiary’s country. A Confirming Bank is the bank which, at the request or with the consent of the Issuing Bank, adds its own irrevocable undertaking to that of the Issuing Bank.

If an overseas bank (buyer’s bank) issues its Irrevocable Letter of Credit and requests that Citibank, New York, add its confirmation and advise the Beneficiary, then Citibank, as Advising and Confirming Bank, could use its own form of advice and confirmation. An example of Advice and Confirmation of Correspondent

Citibank, N.A.
New York, New York

Authority to Pay

April 11, 20__

Mail To: American Export Corporation
100 Elm Lane
Dallas, TX 12323

Citibank Ref. 30020005
Issuer's Ref. 2114

Ladies and Gentlemen:

We hereby advise you that Banco Royale De Milano, Milan, Italy, has authorized us to honor your draft(s) under this Revocable Letter of Credit Number 2114 issued at the request and for the account of the Milan Import Co., Milan, Italy, for a sum not exceeding a total of U.S. \$30,000.00, available by payment of your draft(s) drawn at sight on us subject to the following:

Expiration Date: June 22, 20__	Latest Shipping Date: June 1, 20__
Transshipment not allowed	Partial shipment not allowed
Shipment from: U.S.A. port	Shipment to: Port of Genoa, Italy

and accompanied by the following documents:

- 1) Full set original On Board Ocean Bills of Lading issued to order, blank endorsed, notify the buyer, marked "Freight Prepaid."
- 2) Full set Marine Insurance Policy or Certificates, including War Risks, losses payable to the order of the assured and endorsed in blank.
- 3) Commercial invoice, original and two copies, stating that it covers: "50,000 lbs. U.S. Raw Cotton, C.I.F. Genoa."

This Letter of Credit must accompany all draft(s) and documents and must be presented to us within 21 days after the date of shipment shown on the Bill of Lading but within the expiry date mentioned above, unless sooner revoked. All draft(s), documents and communications to us must mention our reference number shown above.

This advice, which is subject to revocation or modification at any time without notice to you, conveys no engagement on our part or on the part of the above-mentioned issuer and is simply for your guidance in preparing and presenting drafts and documents. All presentations and communications to us must be sent to: Citicorp North America, Inc., Servicer for Citibank, N.A., 3800 Citibank Center, Bldg. F, 1st Floor, Sort 3000, Tampa, Florida 33610, or such other address as we may advise from time to time.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication 500 (the "UCP"). Our advice to you is subject to the UCP and, as to matters not addressed by the UCP, is subject to and governed by New York State and applicable U.S. federal law.

Sample Letter of Credit

Authorized Signature

Illustration 3 – Irrevocable Negotiation Letter of Credit

Citibank, N.A.
New York, New York

Irrevocable Negotiation Letter of Credit

February 9, 20_

Mail To: Citibank, N.A.
Sao Paulo, Brazil

Citibank Ref. 10040000

Ladies and Gentlemen:

At the request and for the account of The Coffee Importers, Inc., New York, New York we hereby issue our Irrevocable Letter of Credit in favor of The Brazilian Coffee Growers Corp., Sao Paulo, Brazil for a sum or sums not exceeding a total of U.S. \$90,000.00, available with any bank by negotiation of the beneficiary's draft(s) drawn at sight on us subject to the following:

Expiration Date: June 30, 20_ (Brazil)	Latest Shipping Date: June 20, 20_
Transshipment not allowed	Partial shipment not allowed
Shipment from: Port of Brazil	Shipment to: Port of New York, New York

and accompanied by the following documents:

- 1) Full set original On Board Ocean Bills of Lading issued to order, blank endorsed, notify the buyer, marked "Freight Prepaid."
- 2) Full set Marine Insurance Policy or Certificates, including War Risks, losses payable to the order of the assured and endorsed in blank.
- 3) Commercial invoice, original and two copies, stating that it covers: "250 Bags of Coffee C.I.F., New York."

This Letter of Credit is to accompany all draft(s) and documents and must be presented for negotiation within 10 days after the date of shipment shown on the Bill of Lading but not later than the expiration date. All draft(s), documents and communications to us must mention our reference number shown above.

We hereby undertake with the beneficiary and any nominated bank that gives value that presentations made in compliance with the terms of this Letter of Credit will be duly honored if presented to us at Citicorp North America, Inc., Servicer for Citibank, N.A., 3800 Citibank Center, Bldg. F, 1st Floor, Sort 3000, Tampa, Florida 33610, or such other address as we may advise from time to time.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication 500 (the "UCP") and, as to matters not addressed by the UCP, is subject to and governed by New York State and applicable U.S. federal law.

Sample Letter of Credit

Authorized Signature

Citibank, N.A.
New York, New York

NAME OF BENEFICIARY
ADDRESS
ADDRESS

DATE

Issuing Bank's Reference Number:
Issuing Bank Letter of Credit Amount:

Citibank Reference Number:

Ladies and Gentlemen:

At the request of the Issuing Bank, we are pleased to enclose a Letter of Credit issued in your favor which has been authenticated by us in accordance with UCP 500 Article 7 and, in accordance with our service standards, is being sent to you within one working day of our being in a position to provide our formal advice. The enclosed Letter of Credit, together with any subsequent amendments thereto, and Advice of Credit must accompany all presentations made under the Letter of Credit.

Our examination of the documents will be in accordance with the terms of the Letter of Credit and the appropriate provisions of UCP 500. In accordance with our service standards, we will endeavor to examine documents by the close of the next business day following receipt and advise you of the outcome.

The Letter of Credit indicates that our charges are for your account. Please remit payment for the following charges (alternatively, these charges will be deducted from the proceeds of drawings presented under the Letter of Credit): Advising Fee @USD XX.XX and DHL/Handling @USD XX.XX.

The following additional charges may apply: Payment/Negotiation Commission @USD XX.XX percent (minimum USD XX.XX); Acceptance/Deferred Payment Commission @USD XX.XX percent (minimum USD XX.XX) for each quarter or part thereof; and/or Discrepant Presentation Fee @USD XX.XX.

If the Letter of Credit calls for time drafts or authorizes Citibank to negotiate, we shall be pleased to consider purchasing and/or discounting conforming drafts/bills of exchange and/or documents presented under the Letter of Credit. Negotiation shall be "with recourse" to you.

This Advice of Credit conveys no engagement or responsibility on our part. All presentations and communications to us must be sent to: Citicorp North America, Inc., Servicer for Citibank, N.A., 3800 Citibank Center, Bldg. F, 1st Floor, Sort 3000, Tampa, Florida 33610, or such other address as we may advise from time to time, and must mention our reference number shown above. Please direct all telephone inquiries to 1-800-568-6283.

You are instructed to review the terms and conditions of the Letter of Credit upon receipt. If any term or condition is unacceptable to you, contact the Applicant or Issuing Bank to request an amendment. All amendments must be advised through us mentioning our reference number shown above.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication 500 (the "UCP"). Our advice to you is subject to the UCP and, as to matters not addressed by the UCP, is subject to and governed by New York State and applicable U.S. federal law.

Sample Letter of Credit

Authorized Signature

Bank's Irrevocable Letter of Credit is shown in Illustration 5 on page 13. Based on the language of this undertaking, Citibank commits to pay under the terms and conditions of the Issuing Bank's Letter of Credit. The Beneficiary has an irrevocable undertaking from a bank in its country on which it may rely without regard to the ability or willingness of the Issuing Bank to fulfill its irrevocable obligation.

Failure of the Issuing Bank to fulfill its irrevocable obligation (because of political restraint, war, insolvency, or other reasons) will not relieve the Confirming Bank of its irrevocable obligation to pay the Beneficiary. Therefore, before adding its confirmation, the Confirming Bank must be satisfied that the Issuing Bank's financial stability and the political stability of the country in which the bank resides justify confirmation of its Irrevocable Letter of Credit. The Confirming Bank must also be satisfied that the Issuing Bank's undertaking provides for presentation of documents to the Confirming Bank.

Recognizing Letters of Credit

In addition to learning the formal language of Letters of Credit, it is equally important to recognize variations in the types of instruments used. The illustrations that follow resemble the standard forms used by Citibank and illustrate the distinctions among Letters of Credit.

Straight Letters of Credit

Irrevocable Letters of Credit, as shown in Illustration 6 on page 14 and Illustration 7 on page 15, may extend to another bank nominated to receive documents and give value or may run to the beneficiary only. In the case of an Irrevocable Straight Letter of Credit (Illustration 7, page 15), the undertaking of the Issuing Bank extends directly to the named Beneficiary only. If a bank or other intermediary gives value to the Beneficiary and forwards documents to the Issuing Bank, it does so at its own risk and acquires no rights of its own against the Issuing Bank.

Unconfirmed Letters of Credit Available at a Local Bank

Irrevocable Letters of Credit issued by overseas banks in favor of U.S. exporters are usually issued payable in U.S. dollars and permit presentation of documents to a nominated bank located in the United States. At the request of the Beneficiary, the nominated bank may advance funds to the Beneficiary and then forward the

documents to the Issuing Bank for reimbursement. For example, the Irrevocable Negotiation Letter of Credit (Illustration 6, page 14) undertakes to anyone who "negotiates" (gives value to the Beneficiary against complying documents) that when the documents are presented to Citibank (Issuing Bank), they will be honored. Thus, a Negotiating Bank becomes directly entitled to reimbursement under the Letter of Credit.

As a practical matter, a local bank is unlikely to give value for documents unless nominated. Even if it is nominated, it is not obligated to give value. Even if it gives value, it may have a right of recourse against the beneficiary (which right is not available to an issuing or confirming bank that gives value), particularly if it is nominated to "negotiate" rather than "pay".

The many different types of Letters of Credit were developed to meet the needs and requirements of buyers and sellers and their banks throughout the world. Those utilizing Letters of Credit will find that they are issued in various forms: revocable or irrevocable, confirmed or unconfirmed, straight or available at a nominated bank for payment or for negotiation of the Beneficiary's documents. Since each type of Letter of Credit meets a different need, it is important that all parties understand their needs with respect to their particular Letters of Credit.

The entire Letter of Credit—not merely the introductory language—must be read and any incorporated practice rules must be considered to determine what banking obligations have been created and what rights have been provided to the Beneficiary and any nominated bank.

Letter of Credit Terms and Conditions

The following terms and conditions are basic to most letters of credit:

Draft - Letters of Credit usually require that the Beneficiary draw a draft on the Issuing Bank. The period of time from the date on which either complying documents are presented or the draft is drawn, to the date on which payment is due, is the "tenor" of the draft. If the draft is payable upon presentation, the draft will be drawn payable at "sight."

If the draft is payable, for example, 30 days after presentation of complying documents ("30 days sight") or 30 days after the date the draft is drawn ("30 days date"), the draft is a time draft. Time drafts may be drawn

Illustration 5 – Confirmed Irrevocable Straight Letter of Credit

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Citibank, N.A.
New York, New York

Confirmed Irrevocable Straight Letter of Credit

March 11, 20__

Mail To: USA Corporation
100 Broadway
New York, NY 10018

Citibank Ref. 30020001
Opener's Ref. 316

Ladies and Gentlemen:

At the request and for the account of The Overseas Bank, Paris, France we are advising you that it has issued this Irrevocable Letter of Credit in your favor at the request and for the account of the French Importing Co. Inc., for a sum or sums not exceeding a total of U.S. \$11,512.00, available by your draft(s) drawn at sight on us subject to the following:

Expiration Date: July 22, 20__	Latest Shipping Date: July 1, 20__
Transshipment not allowed	Partial shipment not allowed
Shipment from: Port of New York, NY	Shipment to: Port of Le Havre, France

and accompanied by the following documents:

- 1) Full set original On Board Ocean Bills of Lading issued to order, blank endorsed, notify the buyer, marked "Freight Prepaid."
- 2) Full set Marine Insurance Policy or Certificates, including War Risks, losses payable to the order of the assured and endorsed in blank.
- 3) Commercial invoice, original and two copies, stating that it covers: "Air Conditioning Parts, C.I.F. Le Havre."

This Letter of Credit must accompany all draft(s) and documents. All draft(s), documents and communications to us must mention our reference number shown above.

The issuer of the Letter of Credit engages with you that each presentation made in compliance with the terms of the Letter of Credit will be honored if presented on or before the expiration date.

We confirm this Letter of Credit and hereby undertake with you to honor each complying presentation made to us at Citicorp North America, Inc., Servicer for Citibank, N.A., 3800 Citibank Center, Bldg. F, 1st Floor, Sort 3000, Tampa, Florida 33610, or such other address as we may advise from time to time. Please direct telephone inquiries to 1-800-568-6283.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication 500 (the "UCP"). Our confirmation to you is subject to the UCP and, as to matters not addressed by the UCP, is subject to and governed by New York State and applicable U.S. federal law.

Sample Letter of Credit

Authorized Signature

Illustration 6 – Irrevocable Negotiation Letter of Credit

Citibank, N.A.
New York, New York

Irrevocable Negotiation Letter of Credit

January 11, 20__

Mail To: The Western Corporation
100 Day Street
Los Angeles, CA 45850

Citibank Ref. 30020004

Ladies and Gentlemen:

At the request and for the account of J. Garcia and Company, San Juan, Puerto Rico, we hereby issue in your favor our Irrevocable Letter of Credit for a sum or sums not exceeding a total of U.S. \$72,146.00 available with any bank by negotiations of your draft(s) drawn at sight on us subject to the following:

Expiration Date: March 22, 20__ (USA)	Latest Shipping Date: March 1, 20__
Transshipment not allowed	Partial shipment not allowed
Shipment from: Port of San Francisco	Shipment to: Port of San Juan

and accompanied by the following documents:

- 1) Full set original On Board Ocean Bills of Lading issued to order, blank endorsed, notify the buyer, marked "Freight Prepaid."
- 2) Full set Marine Insurance Policy or Certificates, including War Risks, losses payable to the order of the assured and endorsed in blank.
- 3) Commercial invoice, original and two copies, stating that it covers: "Aluminum Sliding Glass Doors, C.I.F. San Juan."

This Letter of Credit must accompany all draft(s) and documents. All draft(s), documents and communications to us must mention our reference number shown above.

We hereby undertake with you and any nominated bank that gives value that presentations made in compliance with the terms of this Letter of Credit will be duly honored if PRESENTED FOR NEGOTIATION on or before the stated expiration date. All presentations and communications to us must be sent to: Citicorp North America, Inc., Servicer for Citibank, N.A., 3800 Citibank Center, Bldg. F, 1st Floor, Sort 3000, Tampa, Florida 33610, or such other address as we may advise from time to time. Please direct telephone inquiries to 1-800-568-6283.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication 500 (the "UCP") and, as to matters not addressed by the UCP, is subject to and governed by New York State and applicable U.S. federal law.

Sample Letter of Credit

Authorized Signature

Illustration 7 – Irrevocable Straight Letter of Credit

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Citibank, N.A.
New York, New York

Irrevocable Straight Letter of Credit

May 11, 20_

Mail To: The New Englander Co.
10 West Street
Boston, MA 23490

Citibank Ref. 30020003

Ladies and Gentlemen:

At the request and for the account of The Australian Buyers Association of New York, we hereby issue in your favor our Irrevocable Letter of Credit for a sum or sums not exceeding a total of U.S. \$100,214.00, available by payment of your draft(s) drawn at sight on us subject to the following:

Expiration Date: October 22, 20_
Transshipment not allowed
Shipment from: U.S.A. port

Latest Shipping Date: October 1, 20_
Partial shipment not allowed
Shipment to: Port of Sydney, Australia

and accompanied by the following documents:

- 1) Full set original On Board Ocean Bills of Lading issued to order, blank endorsed, notify the buyer, marked "Freight Prepaid."
- 2) Full set Marine Insurance Policy or Certificates, including War Risks, losses payable to the order of the assured and endorsed in blank.
- 3) Australian Customs invoice, original and two copies, combined with Certificate of Origin stating that it covers: "Spare Parts for Looms, C.I.F. Sydney."

This Letter of Credit must accompany all draft(s) and documents. All draft(s), documents and communications to us must mention our reference number shown above.

We hereby undertake with you to honor each presentation made in compliance with the terms of this Letter of Credit, if presented on or before the stated expiration date to us at Citicorp North America, Inc., Servicer for Citibank, N.A., 3800 Citibank Center, Bldg. F, 1st Floor, Sort 3000, Tampa, Florida 33610, or such other address as we may advise from time to time. Please direct telephone inquiries to 1-800-568-6283.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication 500 (the "UCP") and, as to matters not addressed by the UCP, is subject to and governed by New York State and applicable U.S. federal law.

Sample Letter of Credit

Authorized Signature

for any number of days. For ease in financing, days are usually expressed in 30 day increments, i.e., 30, 60, 90, 120, 150, 180 days. The accepted draft is the unconditional obligation of the Accepting Bank to pay at maturity. When drafts are accepted by a U.S. Accepting Bank they take on special properties. These properties will be discussed in Chapter 7, Banker's Acceptance Financing.

Expiration Date - A Letter of Credit should contain a stated expiration date. The Beneficiary will be required to present the draft(s) and documents to the Issuing Bank or a Nominated Bank on or before that date. Under the Uniform Customs and Practice for Documentary Credits (UCP), published by the International Chamber of Commerce (and incorporated by reference in most commercial letters of credit), if the expiration date falls on a day when banks at the place of presentation are closed, the expiration date is extended to the next business day. Letters of Credit expire at the times and locations specified in the Letter of Credit.

Latest Shipping Date - Most Commercial Letters of Credit contain a latest shipping date. The documents evidencing shipment must not be dated after that date. When "on board" transport documents are required, the date indicated in the "on board" notation on the transport documents is considered the date of shipment.

Marine Bills of Lading are issued in either "Shipped on Board" or "Received for Shipment" form. When a Letter of Credit specifies marine or ocean "on board" bills of lading, "on board" may be evidenced by: 1) a bill of lading being issued using an "on board" form; or 2) a bill of lading bearing an "on board" notation. This notation (sometimes a superimposed stamp) must be dated. The "on board" date (the shipping date) may not be later than the "latest shipping date" indicated in the Letter of Credit.

Unless the Letter of Credit otherwise provides, the UCP requires that marine bills of lading show that the goods are on board. This means that the Beneficiary must either provide an "on board" bill of lading or have the carrier's "on board" notation added on the bill of lading.

Latest Date for Presentation - Unless the credit stipulates otherwise, the UCP requires that documents be presented within 21 days after the date of shipment or other such period stated in the Letter of Credit. For Marine Bills of Lading, the "on board" date is considered the shipment date.

Commercial Letters of Credit are frequently issued with a latest shipping date which is more than 21 days prior to the Letter of Credit expiration date. This is because the most common amendment to a commercial Letter of Credit is to extend the shipping date. The additional period permits the shipping date to be amended without requiring the expiration date be extended. The additional time is not a "cure" period for discrepant documents.

Amendments

If the Beneficiary believes that it will be unable to meet any term or condition, it should contact the Applicant promptly to request an amendment to the Letter of Credit. Any term or condition in a Letter of Credit can be amended if the relevant parties agree. Amendments are typically initiated by an Applicant's request that the issuing bank prepare and send an amendment. An amendment becomes effective as against the Issuing Bank when in its discretion it sends the amendment. The amendment becomes effective as against the Confirming Bank (if any) when it consents and as against the Beneficiary when it consents.

It is possible for a Confirming Bank to advise an amendment without consenting to be bound by it. It is possible for a beneficiary to withhold its consent to an amendment until the beneficiary presents documents that comply with the letter of credit as amended. It is also possible for a letter of credit to provide for an amendment that becomes binding automatically, without beneficiary consent, upon the occurrence of an event, such as the issuing bank's sending or not sending a timely notification of extension or non-extension.



LETTERS OF CREDIT

Avoiding Problems

This chapter discusses how to avoid problems, resolve problems and meet typical documentary requirements.

C H A P T E R

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The first step in avoiding problems is for the Beneficiary to read the Letter of Credit to ensure that they are able to fulfill the terms and conditions of the Letter of Credit. The Issuing Bank has established the Letter of Credit on the terms and conditions requested by the Applicant, and neither the Issuing Bank nor any Confirming Bank is obligated to honor documents that do not strictly comply. Sometimes the Letter of Credit specifically describes the data that must be contained in the documents. In these cases, specified documents must be exactly as required in the Letter of Credit.

Problems are avoided in Letter of Credit transactions if the Beneficiary meets the terms precisely. The bank will be unaware if the terms differ from the purchase order or sales contract and unable to recognize such differences. If the Beneficiary requires a change in the Letter of Credit, it must contact the Applicant and arrange to have the term(s) amended by the Issuing Bank. It is best if the Beneficiary takes this action when the Letter of Credit is received, not after the documents have been prepared and presented under the Letter of Credit.

Problem Resolution

What may the Beneficiary do if it discovers that it is unable to comply with the Letter of Credit after preparing its documents?

The Beneficiary may contact the Applicant requesting an amendment permitting the specific discrepancy.

Alternatively, the Beneficiary may present the discrepant documents under the Letter of Credit with or without a request that the Issuing Bank approach the Applicant for a waiver of all discrepancies.

Finally, the Beneficiary may request that the documents be submitted to the Applicant outside the Letter of Credit on a Documentary Collection basis.

Occasionally, a Beneficiary is notified of a discrepancy after presentation under the Letter of Credit and is able to correct the discrepancy and present again.

Documentary Requirements

To facilitate handling of documents presented under a Commercial Letter of Credit subject to the UCP, unless otherwise stipulated:

Drafts should:

1. be drawn by the Beneficiary on the party specified in the Letter of Credit;
2. not exceed the Letter of Credit amount or its remaining balance;
3. not be payable or endorsed to parties other than to the Beneficiary or to the issuing or a nominated bank;
4. be in negotiable form, endorsed by the Beneficiary as necessary; and
5. reference the Letter of Credit.

Invoices should:

1. be issued by the Beneficiary named in the credit;
2. be issued to the Applicant;
3. describe the merchandise and state prices and terms as specified in the Letter of Credit; and
4. not exceed the Letter of Credit amount or its remaining balance, except as provided in Article 37(b) of UCP500.

Insurance documents should:

1. cover the risks mentioned in the Letter of Credit;
2. cover, at a minimum, 110% of the cost, insurance and freight (CIF), or carriage and insurance paid (CIP) value of the shipment;
3. be countersigned and if the assured is other than the Confirming, Issuing Bank or buyer, be appropriately endorsed, or endorsed in blank;
4. be presented in full set(s); and
5. be in force as of a date not later than the date appearing on the transport document or "on board" notation. See UCP500 Articles 34, 35 and 36.

Marine Bills of Lading should be:

1. presented in full set(s);
2. endorsed when applicable;
3. marked "freight prepaid," "freight collect," or other notation indicated in the Letter of Credit;
4. dated "on board" no later than the stipulated latest shipment date; and
5. "clean" i.e. bear no notations expressly declaring a defective condition of the goods and/or packaging.

Ocean Bills of Lading are the most common transport document required in Commercial Letters of Credit and are representative of the other transport documents defined in the UCP500.

In the event other documents are required such as consular invoices, weight lists, certificates of quality, quantity, etc., they must be issued and presented in accordance with the Letter of Credit. All documents must appear, on their face, to comply with the Letter of Credit and not to be inconsistent with each other. All

documents, unless otherwise stated, must appear to be original, and documents required to be certified or the like must appear to be signed or otherwise appropriately authenticated.

Strictly complying drafts and other documents must be presented under the Letter of Credit on or before the expiration date and within the presentation period stated in the Letter of Credit. If no period is stated, documents must be presented within 21 days of the date of issuance of the bills of lading or other transport documents.



LETTERS OF CREDIT

In Action

C H A P T E R

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To supplement the material covered in previous chapters, this chapter reviews a typical export Letter of Credit and a typical import Letter of Credit. In international trade every Commercial Letter of Credit facilitates both an import and an export since it operates on both sides of the transaction. In this chapter, for ease of illustration, an export Letter of Credit refers to a Letter of Credit covering the export of goods and/or services from the U.S. (payable in U.S. dollars) and an import Letter of Credit refers to a Letter of Credit covering the import of goods and/or services to the U.S. (payable in U.S. dollars).

Export Letters of Credit

L.B. Importer Company, Brazil, arranges to purchase 100 television sets from H.K. Exporter Corporation, New York City. The transaction begins with a sales agreement which includes a requirement that the \$25,000.00 purchase price be payable at “sight” under a confirmed Letter of Credit. L.B. Importer Company then requests that its bank, Banco de Sugar Loaf, Rio de Janeiro, Brazil, issue an Irrevocable Letter of Credit, to be advised and confirmed by Citibank, New York. Illustration 8 on page 25 illustrates the type of instrument which Citibank would provide to the Beneficiary, H.K. Exporter Corporation.

The next step is for H.K. Exporter Corporation to ship the goods and present a \$25,000.00 draft along with the specified documents to Citibank, New York on or before the expiration date of the Letter of Credit. Once Citibank examines the documents and determines that they comply with the Letter of Credit, payment is made without recourse to H.K. Exporter Corporation. Citibank then forwards the documents to the Brazilian bank which examines them, reimburses Citibank, and obtains payment from, and releases the documents to, the Brazilian importer.

Import Letters of Credit

Illustration 9 on page 26 illustrates an import transaction. In this case Citibank in New York is the Issuing Bank, having issued the Letter of Credit for the account of the U.S. importer. Citibank’s Tokyo branch is the Advising Bank. The Letter of Credit is freely negotiable. The Japanese Beneficiary (exporter) of the Letter of Credit may have the draft negotiated by Citibank’s Tokyo branch or another bank in Japan. As a result, the exporter receives funds (typically on a “with recourse” basis) after presenting complying documents. The Japanese Negotiating Bank will, in turn, forward the draft and documents to Citibank, New York. If the documents comply, Citibank will charge its customer, the U.S. importer (Applicant), for the value of the draft and simultaneously pay the Japanese Negotiating Bank and release the documents to the U.S. importer.

If the documents do not comply, Citibank may, in its sole discretion, contact its customer for approval of the specific discrepancy or discrepancies or for a general

authorization to pay. If customer approval is granted and Citibank itself also agrees to waive the discrepancies, payment is made. If the importer or Citibank does not agree to waive the discrepancies, the Japanese Negotiating Bank will be notified of the discrepancies and that the unpaid documents are either being returned to it or held at its disposal.

Foreign Currency Letters of Credit

Letters of Credit may also be issued in foreign currencies, but exporters and importers should be aware of the foreign exchange risk arising from rate fluctuations between currencies. Letters of Credit illustrated in this publication are used to pay for exports from or imports to the U.S., and are issued in U.S. dollars. Most transactions with U.S. importers and exporters are denominated in U.S. dollars. The procedures under Letters of Credit issued in another currency may differ.

If the U.S. importer requests a Letter of Credit in the currency of the exporter’s country, payment to the exporter is made in that country’s currency. When documents complying with the Letter of Credit terms are received by the U.S. Issuing Bank, the U.S. importer must pay the bank an amount equal to the foreign currency paid. The Issuing Bank normally requires the importer to execute a “foreign exchange contract”, which may be a separate agreement or part of the Issuing Bank’s standard reimbursement agreement with a U.S. importer applying for a letter of credit. The bank sells the importer the required foreign currency at the bank’s selling rate on that day (spot rate). The exchange cost—the amount the importer must pay in U.S. dollars—is dependent on the rate when the foreign exchange contract is executed. The importer is subject to exchange rate risk since the exchange rate can fluctuate substantially between the time the contract of sale is made and the date of actual payment under the Letter of Credit.

Although foreign exchange rates vary constantly, U.S. importers can eliminate unfavorable exchange risk by arranging a “forward foreign exchange contract” with the bank. This establishes in advance the exchange rate to be used at the time of payment. Thus, the importer will know the exact cost in dollars at the beginning of the transaction and the Issuing Bank will cover the foreign exchange risk.

Illustration 8 – Confirmed Irrevocable Straight Letter of Credit – EXPORT LETTER OF CREDIT

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Citibank, N.A.
New York, New York

Confirmed Irrevocable Straight Letter of Credit

May 11, 20__

Mail To: H. K. Exporter Corporation
125 Broadway
New York, NY 10022

Citibank Ref. 20020001
Issuer's Ref. 318

Ladies and Gentlemen:

At the request and for the account of Banco De Sugar Loaf, Rio de Janeiro, Brazil, we are advising you that it has issued this Irrevocable Letter of Credit in your favor for the account of L. B. Importer Company, for a sum or sums not exceeding a total of U.S. \$25,000.00, available by payment of your draft(s) drawn at sight on us subject to the following:

Expiration Date: July 22, 20__
Transshipment not allowed

Latest Shipping Date: July 1, 20__
Partial shipment not allowed

Shipment from: Port of New York

Shipment to: Port of Sao Paulo, Brazil

and accompanied by the following documents:

- 1) Full set original On Board Ocean Bills of Lading issued to order, blank endorsed, notify the buyer, marked "Freight Prepaid."
- 2) Full set Marine Insurance Policy or Certificates, including War Risks, losses payable to the order of the assured and endorsed in blank.
- 3) Commercial invoice, original and two copies, stating that it covers: "100 Television Sets, C.I.F. Sao Paulo."

This Letter of Credit must accompany all draft(s) and documents. When presenting your draft(s) and documents or when communicating with us you must mention our reference number shown above.

The issuer of the Letter of Credit engages with you that each presentation made in compliance with the terms of the Letter of Credit will be duly honored on delivery of documents as specified, if presented on or before the expiration date.

We confirm this Letter of Credit and hereby undertake with you to honor each presentation made in compliance with the terms of this Letter of Credit if presented on or before the stated expiration date to us at Citicorp North America, Inc., Servicer for Citibank, N.A., 3800 Citibank Center, Bldg. F, 1st Floor, Sort 3000, Tampa, Florida 33610, or such other address as we may advise from time to time.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication 500 (the "UCP"). Our confirmation to you is subject to the UCP and, as to matters not addressed by the UCP, is subject to and governed by New York State and applicable U.S. federal law.

Sample Letter of Credit

Authorized Signature

Illustration 9 – Irrevocable Negotiation Letter of Credit – IMPORT LETTER OF CREDIT

Citibank, N.A.
New York, New York

Irrevocable Negotiation Letter of Credit

February 2, 20__

Mail To: Citibank, N.A.
Tokyo, Japan

Citibank Ref. 10020000

Ladies and Gentlemen:

We hereby issue our Irrevocable Letter of Credit in favor of The Japan Textile Exporters Corp., Tokyo, Japan, by order and for the account of the Asian Textile Importers, Inc., Des Moines, Iowa, for a sum or sums not exceeding a total of U.S. \$116,000.00, available with any bank by negotiation of the beneficiary's draft(s) drawn at sight on us subject to the following:

Expiration Date: June 22, 20__(Japan)
Transshipment not allowed

Latest Shipping Date: June 1, 20__
Partial shipment not allowed

Shipment from: Japan port

Shipment to: Port of San Francisco, CA

and accompanied by the following documents:

- 1) Full set original On Board Ocean Bills of Lading issued to order, blank endorsed, notify the buyer, marked "Freight Prepaid."
- 2) Full set Marine Insurance Policy or Certificates, including War Risks, losses payable to the order of the assured and endorsed in blank.
- 3) Commercial invoice, original and two copies, stating that it covers: "25,000 Yds. Silk, C.I.F. San Francisco."

This Letter of Credit must accompany all draft(s) and documents and must be presented for negotiation within 21 days after the date of shipment shown on the Bill of Lading but no later than the expiration date.

We hereby undertake with the beneficiary and any nominated bank that gives value that presentations made in compliance with the terms of this Letter of Credit will be duly honored if PRESENTED FOR NEGOTIATION on or before the stated expiration date. All presentations and communications to us must be sent to: Citicorp North America, Inc., Servicer for Citibank, N.A., 3800 Citibank Center, Bldg. F, 1st Floor, Sort 3000, Tampa, Florida 33610, or such other address as we may advise from time to time.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication 500 (the "UCP") and, as to matters not addressed by the UCP, is subject to and governed by New York State and applicable U.S. federal law.

Sample Letter of Credit

Authorized Signature

If the Beneficiary of a Letter of Credit denominated in a foreign currency wishes to receive payment in U.S. dollars, it may arrange for the Paying Bank or the Negotiating Bank to exchange (sell) the foreign currency realized from the transaction. Here, the foreign exchange rate risk is assumed by the Beneficiary, since conversion to U.S. dollars is made at the rate existing at the time the foreign exchange contract (spot contract) is executed. To avoid this risk, the Beneficiary may arrange

a “forward foreign exchange contract” with its bank.

Generally, Beneficiaries and importers are not anxious to speculate in the foreign exchange market. They will protect their position in Letter of Credit transactions by arranging forward foreign exchange contracts through international bankers qualified to provide guidance and expertise in foreign currency dealings.

Citibank foreign exchange traders maintain constant contact with foreign exchange markets throughout the world to provide expert support for such transactions.





LETTERS OF CREDIT

Special Types

Most Commercial Letters of Credit are issued to meet the needs of typical shipment transactions in which the Letter of Credit is used to pay the purchase price for a single sale and shipment of goods. Some, however, are “special” because they meet the needs of less common transactions. This chapter discusses some special types of Letters of Credit.

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Revolving Letters of Credit

If an Applicant and a Beneficiary agree to ship goods on a continuing basis, it may be more efficient and cost-effective if the Applicant establishes one Letter of Credit for all shipments, rather than one Letter of Credit for each shipment. A special Letter of Credit for handling multiple shipments, renewable over an extended period of time, is a “Revolving Letter of Credit.” A Revolving Letter of Credit may operate automatically or by amendment and can be either cumulative or non-cumulative.

Example: An Applicant expects to purchase approximately \$120,000.00 in merchandise from the same supplier during the next year. Each shipment is not to exceed \$10,000.00. Each \$10,000.00 shipment covers the purchase of 500 units. The Applicant has the following options:

Automatic: The Applicant may arrange for a Letter of Credit for a one-year term in the amount of \$10,000.00 providing that the amount available under the Letter of Credit is reinstated for future drawings in an aggregate amount not to exceed \$120,000.00. If the Letter of Credit reinstates the amount automatically upon each payment, the total amount of the bank’s exposure is \$120,000.00 upon issuance.

By Amendment: This procedure operates the same as above except that availability is reinstated only upon specific authorization and amendment to the Letter of Credit. If the Letter of Credit revolves by amendment, the bank’s exposure is \$10,000.00 upon issuance because the bank must approve each amendment.

Given the above example, the Applicant expects to purchase 500 units at a cost of \$10,000.00 per month, for a one-year period (a total of 6,000 units for \$120,000.00). The transaction could be structured as follows:

Cumulative: The Applicant may request a Revolving Letter of Credit to permit the quantity and value of goods not shipped within any month to be carried forward and added to the quantity and value for the following month. For example, if the Beneficiary shipped only 400 units for \$8,000.00 in January, when the Letter of Credit revolved in February the Beneficiary could ship 600 units for \$12,000.00 (i.e., the February shipment of 500 units plus the 100 units not shipped in January). The bank’s exposure is \$120,000.00 because all shipments could be deferred to the last month of the Letter of Credit.

Non-Cumulative: If the Letter of Credit states it is “non-cumulative” or if it does not specify “cumulative,” amounts not utilized in any period may not be carried forward to succeeding periods. The options selected will vary depending upon the needs of the Applicant and the Beneficiary.

Installment Letters of Credit

These Letters of Credit incorporate a schedule or otherwise provide for shipments or drawings by installments. Under the UCP, if the Beneficiary fails to present complying documents for an installment shipment or drawing, the Beneficiary will not be entitled to draw under the Letter of Credit for that or any future shipment or drawing.

Advance Payment Letters of Credit

When a Beneficiary must create special order merchandise for which there may be no other buyer, a Beneficiary may instruct an Applicant to request that the Issuing Bank issue an Advance Payment Letter of Credit. These Letters of Credit contain language which permits the Beneficiary to receive certain funds in advance of presenting commercial documents evidencing the shipment of goods.

Typically the Letter of Credit specifies that the Beneficiary is permitted to present to a local Nominated Bank a draft and a statement that funds will be used for the purposes of fulfilling the terms of the contract of sale. If these documents comply with the Letter of Credit, the Beneficiary is entitled to receive the amount specified at that time and the Nominated Bank is entitled to debit the account of the Issuing Bank.

These Letters of Credit are typically used in transactions where the Applicant and Beneficiary are well known to each other. Under these circumstances, the Applicant is at risk because the Beneficiary, once having received an advance of funds, might not subsequently ship the goods. To protect against this risk, one of the documents required to receive the advance could be a standby Letter of Credit assuring repayment. Standby Letters of Credit are discussed in Chapter 8.

Red Clause Letters of Credit

If an Applicant wants to advance cash to the Beneficiary (possibly the Applicant's purchasing agent) to finance the purchase of the goods before shipment under the Letter of Credit, the Applicant may apply for a Red Clause Letter of Credit.

The "red clause" in a Letter of Credit authorizes the Issuing Bank or, more typically, a Nominated Bank to make a cash advance (loan). It is referred to as a "red clause" simply because the clause is sometimes printed or typed in red ink. Letters of Credit issued with a "red clause" should restrict negotiation or payment to a specific bank. The specified bank charges interest to the Beneficiary at the local rate, unless the Letter of Credit provides otherwise. If the Beneficiary fails to pay the interest charged or principal advanced, the Nominated Bank may look to the Issuing Bank, which will look to the Applicant, for reimbursement.

A "red clause" is typically used when there is a close business relationship between the Applicant and the Beneficiary. The following is a typical "red clause."

"To enable the Beneficiary to pay for the merchandise for the purchase and shipment of which this Letter of Credit is issued, [Named Nominated Bank] may make cash advances, at any time or times during the life of the Letter of Credit, to the Beneficiary not exceeding, in the aggregate, 1) "X" percent, 2) a fixed amount, or 3) the remaining unused balance of this Letter of Credit, whichever is less, repayable with interest out of proceeds of drafts which may later be drawn under this Letter of Credit by the Beneficiary. Any advances not so repaid during the validity of this Letter of Credit shall be reimbursed by the Issuing Bank against the Nominated Bank's tested Telex demand."

Transferable and Back-to-Back Letters of Credit

Sometimes the Beneficiary of a Letter of Credit may not be the actual manufacturer of the goods, but may be playing the role of a middleman, matching buyers' needs with sellers' products. If it is desirable to conceal the manufacturer's unit price or the identity of one party from another, a Transferable Letter of Credit or a Back-to-Back Letter of Credit may permit the transaction to go forward.

Transferable Letters of Credit – When a Letter of Credit issued subject to the UCP is specifically designated

"transferable," the Beneficiary has the right to request the named Transferring Bank to make the Letter of Credit available to one or more other parties. Transferable Letters of Credit may be transferred either in whole or in part to second Beneficiaries (Transferees). However, Transferable Letters of Credit may be transferred only once. If partial shipments are not prohibited, portions of the Transferable Letter of Credit may be transferred separately, but the total amount transferred cannot exceed the amount of the original Letter of Credit (Master Credit).

Under the UCP Letters of Credit may be transferred only on the same conditions as the original Letter of Credit except that amount, unit price, expiration date, period after shipping date for the presentation of documents, and the latest shipping date may be reduced or curtailed as to the second beneficiary. If insurance is required by the original Letter of Credit, the percentage for which insurance must be effected under the Transferred Letter of Credit may be increased in such a way as to provide the amount of insurance coverage required by the Master Credit. In addition, the name of the first Beneficiary can be substituted for that of the Applicant, but if the name of the Applicant is specifically required by the Master Credit to appear in any document(s) other than the invoice, such requirement must be fulfilled.

An example of a Master Credit is shown on page 32 (Illustration 10). The Letter of Credit is issued by Banco Monrovia and advised and confirmed by Citibank with a value of \$100,000.00. In Illustration 11 on page 33, the Letter of Credit has been partially "transferred" at the request of the Beneficiary to one of the four other Beneficiaries (Transferees) for \$24,000.00. In this case, Citibank would issue four separate transfers of \$24,000.00 each under the Master Credit, one in favor of each Beneficiary designated by the Transferor (original Beneficiary), each calling for shipment of one quarter of the merchandise.

The terms and conditions of the four separate Transferred Letters of Credit would be the same as the Master Credit, except for the following differences permitted under the UCP transfer provision.

Amount - The Transferred Credit amount may be less than the amount of the Master Credit.

Invoice from/to - The second beneficiary may present its own invoice addressed to the first beneficiary.

Unit Price - If the Master Credit contains a unit price

Illustration 10 – Confirmed Irrevocable Straight Letter of Credit – TRANSFERABLE (MASTER CREDIT)

Citibank, N.A.
New York, New York

Confirmed Irrevocable Straight Letter of Credit

May 11, 20__

Mail To: USA Corporation
1000 Broad Street
New York, NY 10021

Citibank Ref. 40020001
Issuer's Ref. 328

Ladies and Gentlemen:

At the request and for the account of Banco Monrovia, Monrovia, Liberia we are advising you that it has issued this Irrevocable **TRANSFERABLE** Letter of Credit in your favor for the account of French Monrovia Import Co., for a sum or sums not exceeding a total of U.S. \$100,000.00, available by payment of your draft(s) drawn at sight on us subject to the following:

Expiration Date: July 22, 20__	Latest Shipping Date: July 1, 20__
Transshipment not allowed	Partial shipment allowed
Shipment from: Port of New York, NY	Shipment to: Port of Monrovia, Liberia

and accompanied by the following documents:

- 1) Full set original On Board Ocean Bills of Lading issued to order, blank endorsed, notify the Issuing Bank, marked "Freight Prepaid."
- 2) Full set Marine Insurance Policy or Certificates, including War Risks, for a minimum of 110% of the invoice value, losses payable to the order of the assured and endorsed in blank.
- 3) Commercial invoice, original and two copies, stating that it covers: "Air Conditioning Parts, C.I.F. Monrovia."

This Letter of Credit must accompany all draft(s) and documents. When presenting your draft(s) and documents or when communicating with us you must mention our reference number shown above.

We confirm this Letter of Credit and hereby undertake with you to honor each draft drawn and presented, together with the documents specified, in compliance with the conditions hereof if presented to us at Citicorp North America, Inc., Servicer for Citibank, N.A., 3800 Citibank Center, Bldg. F, 1st Floor, Sort 3000, Tampa, Florida 33610, or such other address as we may advise from time to time.

The issuer of this Letter of Credit engages with you that each draft drawn under and in compliance with the terms of the Letter of Credit will be duly honored on delivery of documents as specified, if presented at to us at the address stated in the preceding paragraph on or before the expiration date.

In the event this Letter of Credit is transferred, you must complete and return in form and substance satisfactory to us your transfer instructions. Such transfer instructions must be accompanied by the original Letter of Credit, as well as our transfer fee.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication 500 (the "UCP"). Our confirmation to you is subject to the UCP and, as to matters not addressed by the UCP, is subject to and governed by New York State and applicable U.S. federal law.

Sample Letter of Credit

Authorized Signature

Illustration 11 – Confirmed Irrevocable Straight Letter of Credit – TRANSFERRED

33

Citibank, N.A.
New York, New York

Confirmed Irrevocable Straight Letter of Credit

May 11, 20__

Mail To: Supply Company Ltd.
Broad Street
Paterson, NJ 23412

Citibank Ref. 40020009
Issuer's Ref. 328

Ladies and Gentlemen:

At the request of USA Corporation we hereby transfer in your favor Banco Monrovia, Monrovia, Liberia Irrevocable Letter of Credit number 328 available up to an aggregate amount of **U.S. \$24,000.00,** available by payment of your draft(s) drawn at sight on us subject to the following:

Expiration Date: July 11, 20__

Transshipment not allowed

Shipment from: Port of New York, NY

Latest Shipping Date: June 25, 20__

Partial shipment allowed

Shipment to: Port of Monrovia, Liberia

and accompanied by the following documents:

- 1) Full set original On Board Ocean Bills of Lading issued to order, blank endorsed, notify the Issuing Bank, marked "Freight Prepaid."
- 2) Full set Marine Insurance Policy or Certificates, including War Risks, for **115%** of invoice value, losses payable to the order of the assured and endorsed in blank.
- 3) Commercial invoice, original and two copies, stating that it covers: "Air Conditioning Parts, C.I.F. Monrovia."

In accordance with the sub-article 48(d) of the UCP500, USA Corporation has retained the right to refuse the Transferring Bank to advise amendments to you.

This Letter of Credit must accompany all draft(s) and documents. When presenting your draft(s) and documents or when communicating with us you must mention our reference number shown above.

We confirm this Letter of Credit and hereby undertake with you to honor each draft drawn and presented as specified if presented to us at Citicorp North America, Inc., Servicer for Citibank, N.A., 3800 Citibank Center, Bldg. F, 1st Floor, Sort 3000, Tampa, Florida 33610, or such other address as we may advise from time to time.

The issuer of this Letter of Credit engages with you that each draft drawn under and in compliance with the terms of the Letter of Credit will be duly honored on delivery of documents as specified, if presented at to us at the address stated in the preceding paragraph on or before the expiration date.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication 500 (the "UCP"). Our confirmation to you is subject to the UCP and, as to matters not addressed by the UCP, is subject to and governed by New York State and applicable U.S. federal law.

Sample Letter of Credit

Authorized Signature

and the transferee beneficiary is charging the original beneficiary a lesser unit price, then the unit price would be reduced accordingly on the Transferred Letter of Credit.

Expiration Date - The expiration date of the Transferred Letter of Credit may be adjusted to expire before the Master Credit to give the original Beneficiary an opportunity to substitute its draft and invoice for those presented by the Transferee. If a Letter of Credit has been transferred in its entirety, substitution of the draft and invoice is not necessary and, thus, the expiration date need not be adjusted.

Presentation Date - The period between the shipping date and the presentation date may be curtailed.

Latest Shipment Date - In addition, the shipping date may also be adjusted to avoid any conflict with the curtailed expiration date or the latest date for presentation of documents. If a Letter of Credit has been transferred in its entirety, the latest shipment date need not be adjusted.

Percentage of Insurance Coverage - The minimum acceptable percentage of insurance coverage is 110% of the CIP or CIF value, unless stated otherwise in the Letter of Credit. Assuming the Master Credit value was \$100,000.00, the minimum coverage (if there was one shipment) would be \$110,000.00.

However, if the Master Credit was transferred for \$96,000.00 (\$24,000 x 4), the percentage of insurance coverage required under the Transferred Credits must be increased to satisfy the terms of the Master Credit. The insurance documents presented by the transferee must equal the minimum \$110,000.00 (\$27,500 x 4) coverage specified in the Master Credit.

If the four Beneficiaries (Transferees) in our example each present a draft for \$24,000.00, accompanied by the required documents, and the original Beneficiary presents its conforming draft and invoice for \$100,000.00 in substitution thereof, Citibank, as confirming bank to whom each Transferee Beneficiary presented its documents, would make four separate examinations of the documents and four separate \$24,000.00 payments to the Transferees and one payment of \$4,000.00 to the original Beneficiary for a total of \$100,000.00.

Thus, the original Beneficiary assumes the role of a middleman and, as such, receives \$4,000.00. The substitution of documents (draft and invoice) may permit

the middleman to protect himself from the buyer going directly to the supplier for future orders—however, it is not always possible to conceal the identity of the actual supplier from the end user or vice versa. Therefore, a Beneficiary seeking to keep the identities of buyers and sellers disguised through the use of Transferable Letters of Credit should review the proposed transaction carefully with a trade expert.

It is important to note that the substituted draft and invoice from the original Beneficiary must comply with the terms of the Master Credit and not conflict with the documents of the other Beneficiaries. If, in our example, the original Beneficiary fails on first demand to present its draft and invoice for substitution, Citibank has the right to deliver to the Issuing Bank the Transferee's documents without further responsibility to the original Beneficiary.

In Illustration 11 on page 33, the first Beneficiary, USA Corporation, has retained the right to refuse the Transferring Bank to advise amendments directly to the second Beneficiary, Supply Company Ltd. in accordance with sub-article 48(d) of the UCP500. There are many reasons the first Beneficiary might decide to retain this right—for example, the amendment might pertain to only one of the four second Beneficiaries.

Back-to-Back Letters of Credit – On occasion a Beneficiary of a nontransferable Letter of Credit seeks to use it as a basis for requesting a bank to issue a second, parallel Irrevocable Letter of Credit in favor of the manufacturer or supplier of those goods needed for shipment under the first Letter of Credit. In this case, the Beneficiary of the Irrevocable Letter of Credit (generally a broker or middleman) will become the Applicant of the second Letter of Credit, utilizing the first as a source of payment to the issuer of the second Letter of Credit. The two Letters of Credit used to facilitate the purchase and resale of the same goods are called Back-to-Back Letters of Credit.

Coordinating two Letters of Credit to cover both the purchase and resale of the same goods is a complicated process. A Beneficiary seeking back-to-back financing should ask its bank if this type of accommodation is available prior to requesting a Letter of Credit in its favor. In order to rely on the benefits of the first Letter of Credit, the issuer of the second Letter of Credit will likely insist that it be the Confirming Bank under the first, so as to have a right to receive and to accept or reject amendments in its discretion.

Assignment of Proceeds

If the Letter of Credit is not transferable, the Beneficiary in search of financing may request the Issuing or a Nominated Bank to pay to a third party some or all of the amounts drawn under the Letter of Credit that would otherwise go to the Beneficiary. The third party (Assignee) is not entitled to the proceeds of the Letter of Credit unless the bank paying the proceeds acknowledges the assignment and the Beneficiary (Assignor) presents complying documents. If the Beneficiary fails to submit complying documents under the Letter of Credit, the Assignee will not be paid.

Simplified Letters of Credit

A Simplified Letter of Credit imposes fewer documentary requirements than a typical Letter of Credit.

Unlike a typical commercial Letter of Credit, it may not require the Beneficiary to present original shipping documents. Instead, the Simplified Letter of Credit may require the Beneficiary to present either:

- 1) its signed statement that the shipment has been made according to the Applicant's order and that the shipping documents have been sent directly to the Applicant; or
- 2) copies of the original shipping documents and its signed statement that the original shipping documents have been sent directly to the Applicant.

The advantage to the Applicant is that it will receive the original shipping documents sooner than it would have had the original documents been presented under the Letter of Credit. Since the Applicant may be unable to claim the goods upon their arrival in port without presenting original shipping documents, having the documents in hand on the arrival date is a convenience to the Applicant and may save demurrage (storage) charges imposed by the port authority.

The disadvantage to the Applicant is that it must rely more heavily on the integrity of the Beneficiary.

Although nothing in any Letter of Credit assures the Applicant that the goods shipped are in fact the goods for which it contracted, in a typical commercial Letter of Credit the bank's receipt of original shipping documents provides the bank and the Applicant with evidence prior to payment under the Letter of Credit that a shipment has occurred. In a Simplified Letter of Credit this evidence is not provided prior to payment.

Whether a Simplified Letter of Credit is appropriate in each case is a decision for the Applicant. Whether the bank will agree to issue a Simplified Letter of Credit depends upon the creditworthiness of the Applicant. The Applicant's creditworthiness will be of increased importance to the bank to the extent that the bank will not have control over a bill of lading or other title document that controls the goods described in that document.





LETTERS OF CREDIT

Export Credit Agencies and International Development Banks

Many government agencies provide financial assistance in the form of grants, loans, subsidies and guarantees to facilitate the export of goods and services to emerging markets. When these exports are financed by Letters of Credit, banks become intermediaries. In this chapter is a list of key export credit agencies and international development banks.

Export Credit Agencies

Importers, exporters and commercial banks often participate in export credit agency programs established to facilitate the export of goods and services to emerging markets. The agency programs provide financial assistance in the form of grants, loans, subsidies and guarantees. Grants, loans and subsidies are forms of direct agency assistance. Guarantees are a form of indirect assistance used to induce a commercial bank to provide a direct loan to the importer or confirm a Letter of Credit issued by the importer's local bank. In either case, whether the agency assistance is direct or indirect, the agencies typically insist upon Letters of Credit—as opposed to advance cash payments—as the method for disbursing proceeds of the loan or other financial assistance.

The Beneficiary's right to payment under the Letter of Credit will be subject to the terms and conditions of the agency-approved Letter of Credit, which will typically include special conditions of the agency's commitment letter (or guarantee, as the case may be), and the agency's regulations. Copies of the agency's regulations can be obtained by writing directly to the agency. Importers and exporters using agency programs should become familiar with the requirements of the programs and may wish to contact Citibank's trade specialists for assistance.

International Development Banks

Importers, exporters and commercial banks also participate in international development bank programs established to provide assistance to lesser-developed countries.

The World Bank - The World Bank is a multinational organization based in Washington, D.C. It is owned by its member nations which consist of the major developed countries. Originally founded as the International Bank for Reconstruction and Development (IBRD), it was later expanded with the creation of the International Finance Corporation (IFC), which focuses on stimulating private sector investment, and the International Development Agency (IDA), which focuses on the least-developed countries in the developing world.

The World Bank is the predominant international agency devoted to providing financial assistance to the developing world. A major portion of this assistance is disbursed directly to the recipients via special accounts opened by them with international commercial banks. The disbursements are frequently used to establish cash-collateralized Letters of Credit. The World Bank also issues commitment letters to induce commercial banks to issue or confirm Letters of Credit. Payments made by commercial banks under World Bank commitments are reimbursable to them via telex claims to the World Bank. No special documents are normally required to obtain reimbursement.

Other Development Banks - Similar to the World Bank, there are a number of banks outside of the United States whose ownership and focus are regional, such as the Asian Development Bank, the InterAmerican Development Bank, and the African Development Bank. These banks also issue various forms of reimbursement commitments and guarantees. Specific information can be obtained by writing directly to them or by contacting Citibank.

List of National Export Credit Agencies and International Development Banks Export Credit Agencies

Following are some of the most frequently used Government Financing Sources.

Australia

Export Finance and Insurance Corporation (EFIC)

Austria

Oesterreichische Kontrollbank Aktiengesellschaft (OEKB)

Belgium

Office National Du Dueroire Creditexport

Brazil

Instituto De Resseguros Do Brasil (IRB)
Carterira Do Comerico Exterior-Banco Do Brazil S/A (CACEX)

Canada

Export Development Corporation (EDC)

Denmark

Eksportkreditradet (EKR)
Dansk Eksportfinansieringsfond (EF)

France

Compagnie Francaise D'Assurance Pour Le Commerce
Exterieur (COFACE)

Germany

Hermes Kreditversicherungs A.G.
Ausfuhrkredit-Gesellschaft mbh (AKA)
Kreditanstalt Fur Wiederaufbau (KFW)

India

Export-Import Bank of India

Italy

Sezione Speciale Per L'Assicurazione Del Credito All
Esportazione (SACE)
Mediocredito Centrale

Japan

Ministry of International Trade and Industry (MITI)
Export-Import Bank of Japan (J-Eximbank)

Korea

Export-Import Bank of Korea

Mexico

Fondo Para El Fomento De Las Exportaciones De
Productos Manufacturados (BANCOMEXT)

Netherlands

Nederlandsche Credietverzekering Maatschappij
(NCM)
De Nederlandsche Bank (DNB)

New Zealand

Export Guarantee Office (EXGO)

Spain

Compania Espanola De Seguros de Credito a la
Exportacion (CESCE)
Export Finance

Sweden

Exportkreditnamnden (EKN)
A/B Svensk Exportkredit (SEK)

Switzerland

Export Risiko Garantie (ERG)

Taiwan

Export-Import Bank of the Republic of China (Taiwan)

United Kingdom

Export Credits Guarantee Department (ECGD)

United States

Export-Import Bank of the United States (Eximbank)
Private Export Funding Corporation (PEFCO)
Overseas Private Investment Corporation (OPIC)
U.S. Agency for International Development (AID)
U.S. Department of Agriculture-Commodity Credit
Corporation (CCC)

International Development Banks

African Development Bank (ADB)
Inter-American Development Bank (IDB)
International Bank for Reconstruction and
Development (IBRD) (The World Bank)
International Finance Corporation (IFC)
Multilateral Investment Guarantee Agency (MIGA)



LETTERS OF CREDIT
U.S. Dollar Banker's
Acceptance Financing

C H A P T E R

7

U.S. Dollar Banker's Acceptances, normally used for short-term financing of goods in the Channels of Trade, are discussed in this chapter.

The Beneficiary's ultimate objective in requesting a Letter of Credit is to receive funds of and from a bank rather than the applicant. The previous chapters dealt with transactions payable at "sight" where the bank makes payment against presentation of conforming "sight" drafts and/or documents under a Letter of Credit. However, drafts may also be drawn payable in the future (normally anywhere from 30 to 180 days "sight" or "date"). Such drafts are "accepted", rather than paid, by the Drawee Bank upon determination that documents comply. A bank "accepts" a draft drawn on it by placing the word "Accepted" on the face of the draft, dating and signing the notation. This type of draft, payable in U.S. dollars, drawn on and accepted by a bank, is a Banker's Acceptance. The accepted draft is the unconditional obligation of the Accepting Bank to pay at maturity.

When the Beneficiary (exporter) of a Letter of Credit agrees to Letter of Credit terms stating that payment will be available by acceptance of drafts drawn at "60 days sight," the Beneficiary is extending credit terms to the Applicant (buyer), by agreeing to wait 60 days for payment. Thus, when the Beneficiary presents conforming draft(s) and documents to the Paying-Accepting Bank, it does not expect payment at "sight" but rather it expects the bank to "accept" the draft and to receive payment 60 days later.

A Banker's Acceptance is a time draft drawn on a bank which is accepted by the bank and is payable at a predetermined future date. Once "accepted," the draft becomes a marketable instrument which the Beneficiary may sell at a discount to any bank. A Banker's Acceptance can provide an immediate source of funds for the Beneficiary and can simultaneously defer payment by the Applicant.

Banker's Acceptances are regulated in the U.S. by the Board of Governors of the Federal Reserve System (the "Board"). A time draft drawn on and accepted by any member bank of the Federal Reserve System (or any foreign bank subject to the International Banking Act reserve requirements) is a "Banker's Acceptance." There are two types of Banker's Acceptances—"Eligible Banker's Acceptances" and "Ineligible Banker's Acceptances." If a Banker's Acceptance grows out of an eligible transaction, as defined by the Board, and involves a time draft with a tenor of six months or less, it

is an Eligible Banker's Acceptance. If it does not grow out of an eligible transaction or if it involves a draft with a tenor of more than six months, it is an Ineligible Banker's Acceptance.

Eligible Banker's Acceptances

Banker's Acceptances of either type are permissible. However, Eligible Banker's Acceptances are favored by the Board. Both types are freely negotiable. The Board does not require the Accepting Bank to post reserves against Eligible Banker's Acceptances. This makes them more appealing to banks, increases the size of the Eligible Banker's Acceptance market and lowers the overall cost to the Beneficiary. The Banker's Acceptance market is comprised of banks, brokers, other institutions and private investors who both buy and sell Banker's Acceptances. The cost of a Banker's Acceptance is equal to the discount rate determined by the market. The discounting bank deducts the charge from the face amount of the draft. The balance of the draft is paid to the Beneficiary. Alternatively, the charge may be paid by the Applicant if the Beneficiary and Applicant agree in advance.

Eligible Transactions

An Eligible Banker's Acceptance must grow out of one of the following eligible transactions:

- The import or export of goods;
- The domestic shipment of goods; or
- The storage of readily marketable staples. (A "readily marketable staple" is defined by the Board to mean manufactured goods or raw materials which are non-perishable, generally produced, well-established in commerce and have an easily ascertainable price.)

The transaction underlying the Banker's Acceptance must meet the following requirements of the Board:

- 1) The transaction must involve a draft (drawn on and accepted by any member bank of the Federal Reserve System or any foreign bank subject to the International Banking Act reserve requirements) with a tenor of six months or less.
- 2) The transaction must be self-liquidating. This means that the borrower is to apply the proceeds from the sale

or resale of the goods toward payment of the accepted draft.

- 3) The transaction must not involve dual financing.
- 4) The goods covered by the transaction must be in the “Channels of Trade.” Goods in the “Channels of Trade” means goods which are being manufactured, packaged, shipped, received, stored or resold.

Eligible Banker’s Acceptance financing has been put to a variety of uses. Any individual, corporation or firm involved in the shipment of goods payable in U.S. dollars should consider Banker’s Acceptance financing as a short-term financing tool. The following illustrates how Banker’s Acceptance financing may be used.

U.S. Exports and Imports

Time Draft Export Letter of Credit:

Financing to the importer in connection with a U.S. export—In Illustration 12 on page 45 a Missouri Beneficiary presents documents together with a 90 day “sight” draft drawn on Citibank, New York, and requests the draft be accepted. Upon examination, Citibank determines that the documents conform to the Letter of Credit and also that the transaction meets the Board’s requirements for Eligible Banker’s Acceptances. It places an “acceptance” stamp and also an “eligibility” stamp on the face of the draft, thus creating an Eligible Banker’s Acceptance (as illustrated on page 46, Illustration 13), returns the accepted draft to the payee-drawer-beneficiary, and forwards the documents to the Issuing Bank. Since the Beneficiary did not request that Citibank discount the draft upon acceptance, the Beneficiary holds the accepted draft and presents it at maturity to Citibank for payment. The draft matures and becomes payable on November 3, which is 90 days from the date on which the draft was accepted. By agreeing to ship on 90-day terms the Beneficiary has granted credit terms to the importer. On an acceptance Letter of Credit, the issuer’s and confirmer’s duty to honor is to accept and, at maturity, to pay.

Financing to the Beneficiary and the importer in connection with a U.S. export—Had the Beneficiary requested that Citibank discount the draft upon acceptance, Citibank would have purchased the accepted draft from the Beneficiary at the time of acceptance and

would have paid the Beneficiary the net proceeds (face amount of the draft less the discount calculated at the then current market discount rate). The amount of the discount is calculated at Citibank’s discount rate for the discount period, i.e., the number of days from the date of purchase to the date of the draft’s maturity. If the accepted draft had been discounted on August 5, for 90 days, at a rate of 8% per annum, the discount would be equal to two thousand dollars (\$2,000.00). The calculation is the amount of the draft, times the discount rate, times the number of days until maturity, divided by 360 equals the discount ($\$100,000.00 \times 8\% \times 90 \div 360 = \$2,000.00$). The net amount paid to the Beneficiary would be ninety eight thousand dollars (\$98,000.00). Both the Beneficiary and the Applicant would receive financing: the Applicant because it does not have to pay until the maturity date; the Beneficiary because it receives payment by discounting the draft immediately.

Time Draft Import Letter of Credit:

Financing to the Beneficiary and the importer in connection with an overseas export—In Illustration 14 on page 47 an overseas Beneficiary extends credit to its U.S. importer by using a Banker’s Acceptance. (In the previous illustration, a U.S. Beneficiary extends credit to its overseas importer by using a Banker’s Acceptance.) A Banker’s Acceptance in U.S. dollars enables the overseas Beneficiary to sell the accepted draft and receive discounted funds immediately either from Citibank or from one of the dealers in the U.S. banker’s acceptance market.

Illustrations 12 and 14 demonstrate that Banker’s Acceptance Financing in U.S. dollars operates similarly for U.S. exports and imports. For exports to the U.S., the overseas Beneficiary draws a draft on a U.S. bank. The procedure for discounting drafts or paying at maturity is the same for U.S. exports and imports. It is also the same for domestic shipments and for shipments between foreign countries in U.S. dollars.

Refinancing “Sight” Draft Letters of Credit

Financing to importers—Importers can use Banker’s Acceptance financing in connection with “sight” draft Letters of Credit. For example, a U.S. importer can arrange for a Letter of Credit involving a draft payable at

“sight.” After payment under the Letter of Credit is made to the Beneficiary and the Issuing Bank has debited the importer’s account, the importer may arrange for the bank to “refinance” the import for a specific period, for example 60 days, by using a Banker’s Acceptance. Under this arrangement, the importer draws a draft on its bank payable at 60 days “sight.” The bank accepts the draft, discounts it, and pays the face value of the draft, less the discount, to the importer. At maturity, the importer is required to pay the full face value of the draft from the sale of the imported goods.

Pre-Export Financing

A U.S. exporter with a firm contract of sale may draw a time draft on its bank. The bank accepts the draft, discounts it, and pays the face value of the draft, less the discount, to the exporter. The exporter uses the funds to secure and prepare the goods for export. The proceeds from the sale of the exported goods are used to pay off the Banker’s Acceptance at maturity.

Shipments within the United States

Shipments by land, rail, or other means of transportation from one point to another within the U.S. may be financed by Banker’s Acceptances in a manner similar to international shipments.

Storage within the United States or Overseas

Eligible Banker’s Acceptances created to finance the storage of goods must cover merchandise defined as a “readily marketable staple” (i.e., coal, natural gas, petroleum, grain, precious metals, etc.). Title to any financed staple must be in the name of the accepting bank at the time the Banker’s Acceptance is created. Title to the goods is represented by a third party warehouse receipt or other document giving the accepting bank clear title at the time the Banker’s Acceptance is created.

Collections

Import “sight” collections may be refinanced in the same manner as “sight” draft Letters of Credit, as discussed above. Export collections may be financed as discussed in Pre-Export Financing.

Ineligible Banker’s Acceptances

Although generally less attractive than Eligible Banker’s Acceptances, Ineligible Banker’s Acceptance financing may be an attractive alternative to direct borrowing during periods when bank funds are limited and customers’ borrowing needs are extraordinary.

An “Ineligible Banker’s Acceptance” involves a draft(s) drawn on and accepted by any member bank of the Federal Reserve System or any foreign bank subject to the International Banking Act reserve requirements and has the following characteristics:

- the transaction does not meet the Board’s requirements i.e., the draft has a tenor longer than six months or does not involve the import or export of goods, the domestic shipment of goods, or the storage of readily marketable staples;
- the drafts are typically discounted at a higher rate;
- the discounting bank may be required to post reserves; and
- the drafts are marked “Ineligible” on their face.

Importers and exporters needing to finance merchandise, internationally or within the U.S., should investigate Banker’s Acceptance financing. At times, such financing may be more advantageous than direct borrowing. During periods of “tight money” (when banks have limited funds to meet all customer borrowing needs), banks may be willing to provide Banker’s Acceptance financing despite a limited availability of funds for direct loans.

Illustration 12 – Export Letter of Credit – ACCEPTANCE FINANCING

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Citibank, N.A.
New York, New York

Confirmed Irrevocable Straight Letter of Credit

May 11, 20__

Mail To: The Missouri Corporation
1000 Broadway
St. Louis, MO 91230

Citibank Ref. 30030029
Issuer's Ref. 1500

Ladies and Gentlemen:

At the request and for the account of The Royale German Bank, Frankfurt, Germany we are advising you that it has issued this Irrevocable Letter of Credit in your favor for the account of The German Export Co., for a sum or sums not exceeding a total of U.S. \$100,000.00, available with Citibank, N.A. by acceptance of your draft(s) at **90 DAYS AFTER SIGHT** on us subject to the following:

Expiration Date: August 22, 20__	Latest Shipping Date: August 1, 20__
Transshipment not allowed	Partial shipment not allowed
Shipment from: Port of New York, NY	Shipment to: Port of Bremen, Germany

and accompanied by the following documents:

- 1) Full set original On Board Ocean Bills of Lading issued to order, blank endorsed, notify the buyer, marked "Freight Prepaid."
- 2) Full set Marine Insurance Policy or Certificates, including War Risks, losses payable to the order of the assured and endorsed in blank.
- 3) Commercial invoice, original and two copies, stating that it covers: "5000 yds. window screening, C.I.F. Bremen."
- 4) Packing list in triplicate showing goods packed in plastic containers.

This Letter of Credit must accompany all draft(s) and documents. When presenting your draft(s) and documents or when communicating with us you must mention our reference number shown above.

The issuer of this Letter of Credit engages with you that each draft drawn under and in compliance with the terms of the Letter of Credit will be duly if presented on or before the expiration date.

We confirm this Letter of Credit and hereby undertake with you to honor each draft drawn and presented with the above specified documents if presented to us at Citicorp North America, Inc., Servicer for Citibank, N.A., 3800 Citibank Center, Bldg. F, 1st Floor, Sort 3000, Tampa, Florida 33610, or such other address as we may advise from time to time.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication 500 (the "UCP"). Our confirmation to you is subject to the UCP and, as to matters not addressed by the UCP, is subject to and governed by New York State and applicable U.S. federal law.

Sample Letter of Credit

Authorized Signature

Illustration 13 – Export Letter of Credit – BANKER'S ACCEPTANCE

Citibank, N.A.
New York, New York

Confirmed Irrevocable Straight Letter of Credit May 11, 20__

Mail To: The Missouri Corporation
1000 Broadway
St. Louis, MO 91230

Citibank Ref. 3003002
Issuer's Ref. 1500

Ladies and Gentlemen:

At the request and for the account of The Royale German Export Co., for a sum or sums not exceeding \$100,000 (One Hundred Thousand United States Dollars only), Citibank, N.A. by acceptance of your draft(s) is hereby advising you that it has issued this Irrevocable Letter of Credit for the following:

Expiration Date: July 30, 20__

Transshipment: Allowed

Shipment: To be advised

and account of The Missouri Corporation, St. Louis, MO 91230

Accepted
Citibank, N.A.
St. Louis, Missouri
Date: May 11, 20__
Reference: 3003002

The Missouri Corporation
St. Louis, MO 91230
At 90 Days After Sight
Pay to the Order of The Missouri Corporation
the value of U.S. Currency \$100,000 (One Hundred Thousand United States Dollars only)
for value received under Letter of Credit No. 3003002
Frankfurt, Germany, and Citibank, N.A.
To: Citibank, N.A.
New York, N.Y.

The Missouri Corporation is hereby authorized to present this Letter of Credit to Citibank, N.A. for payment at the time of maturity. The Missouri Corporation is hereby authorized to present this Letter of Credit to Citibank, N.A. for payment at the time of maturity. The Missouri Corporation is hereby authorized to present this Letter of Credit to Citibank, N.A. for payment at the time of maturity.

We confirm the issuance of this Letter of Credit and hereby undertake with you to honor each draft drawn and presented with the above specified documents if presented to us at Citicorp North America, Inc., Servicer for Citibank, N.A., 3800 Citibank Center, Bldg. F, 1st Floor, Sort 3000, Tampa, Florida 33610, or such other address as we may advise from time to time.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication 500 (the "UCP"). Our confirmation to you is subject to the UCP and, as to matters not addressed by the UCP, is subject to and governed by New York State and applicable U.S. federal law.

Sample Letter of Credit

Authorized Signature

Illustration 14 – Import Letter of Credit – ACCEPTANCE FINANCING

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Citibank, N.A.
New York, New York

Irrevocable Negotiation Letter of Credit

December 10, 20__

Mail To: Citibank, N.A.
Sao Paulo, Brazil

Citibank Ref. 10020000

Ladies and Gentlemen:

At the request and for the account of The City Coffee Servers, Inc., New York we hereby issue our Irrevocable Letter of Credit in favor of The Brazilian Coffee Growers Inc., Sao Paulo, Brazil for a sum or sums not exceeding a total of U.S. \$190,000.00, available with you by negotiation of the beneficiary's draft(s) drawn at **90 DAYS SIGHT** on us subject to the following:

Expiration Date: June 22, 20__
Transshipment not allowed
Shipment from: Brazil

Latest Shipping Date: June 1, 20__
Partial shipment not allowed
Shipment to: New York, New York

and accompanied by the following documents:

- 1) Full set original On Board Ocean Bills of Lading issued to order, blank endorsed, notify the buyer, marked "Freight Prepaid."
- 2) Full set Marine Insurance Policy or Certificates, including War Risks, losses payable to the order of the assured and endorsed in blank.
- 3) Commercial invoice, original and two copies, stating that it covers: "25,000 bags of coffee, C.I.F. New York."

This Letter of Credit must accompany all draft(s) and documents and must be presented for negotiation within 21 days after the date of shipment shown on the Bill of Lading but within the expiration date. The negotiating bank is to forward all drafts and documents listed herein by airmail in a single lot to us at Citicorp North America, Inc., Servicer for Citibank, N.A., 3800 Citibank Center, Bldg. F, 1st Floor, Sort 3000, Tampa, Florida 33610, stating our reference number above.

We hereby undertake with you and the beneficiary that drawings presented in conformity with the terms of this Letter of Credit will be honored if presented for negotiation on or before expiration and accepted drafts will be paid at maturity.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication 500 (the "UCP") and, as to matters not addressed by the UCP, is subject to and governed by New York State and applicable U.S. federal law.

Sample Letter of Credit

Authorized Signature



LETTERS OF CREDIT Standby

The banking industry has found it useful to distinguish between Commercial Letters of Credit, used to pay the purchase price for the shipment of goods, and Standby Letters of Credit, used for other purposes as discussed in this chapter.

C H A P T E R

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Commercial Letters of Credit issued to pay for shipments normally require that the Beneficiary present current bills of lading, insurance certificates, commercial invoices, etc. Standby Letters of Credit, on the other hand, are not typically used to pay for a current shipment of goods and, therefore, documents evidencing a sale and shipment of goods are not required. Standby Letters of Credit are frequently used as a form of payment guarantee in the case of non-performance by the Applicant of a contractual or other obligation owed by the Applicant to the Beneficiary. Standby letters of credit are also frequently used to effect direct payment to the beneficiary. An example of the face of an Application form for a Standby Letter of Credit is shown on page 51 (Illustration 15).

“Guarantee” and “Payment”

Before discussing the variety of purposes served by Standby Letters of Credit, let us review the two basic types—the guarantee type (sometimes called “default”) and the payment type (sometimes called “direct-pay”).

Guarantee (“Default”) Type

Standby Letters of Credit may be issued to provide funds following a default by the bank’s customer of its contractual or other obligations. They typically provide for payment against receipt of the Beneficiary’s statement that the Applicant is in default of its obligation to the Beneficiary and that the amount demanded is owed as a consequence of that default. Illustration 16 on page 52 is a guarantee type Standby Letter of Credit. Because a letter of credit is independent of the underlying contract, the bank’s obligation to pay under a standby letter of credit does not depend on whether there has in fact been a default.

Payment (“Direct Pay”) Type

Illustration 17 on page 53 is a payment type Standby Letter of Credit. In this case, the Beneficiary is expected to draw under the Standby Letter of Credit to obtain payment when due on the underlying contract. The payment type Standby Letter of Credit functions as an immediate, no-default payment mechanism, under which the beneficiary receives the funds of the Issuing Bank, rather than the Applicant.

What Are the Risks?

There are risks in any commercial or financial transaction. With a Standby Letter of Credit, the Issuing Bank substitutes its creditworthiness for that of its customer, the Applicant. The Standby Letter of Credit entitles the Beneficiary to payment from the Issuing Bank, up to a stated amount, on presentation of strictly complying documents required by the Standby Letter of Credit. The primary risks for the Beneficiary are whether the irrevocable commitment is given by a reputable and financially sound bank, and whether the Beneficiary can comply with the Standby Letter of Credit terms and conditions in every contingency for which payment might be owed by the Applicant to the Beneficiary.

The Applicant is obligated to the bank for any amount paid under the Standby Letter of Credit. The primary risks for the Applicant arise from the fact that the documents to be presented under a standby Letter of Credit typically lack intrinsic value. They are frequently statements signed by the Beneficiary. Therefore, the Applicant must use sound business judgment when entering into a contract with a party in whose favor the Standby Letter of Credit will be issued—judgment that the Beneficiary will use the Standby Letter of Credit in a manner consistent with the underlying agreement and understanding of the Applicant. The need for integrity exists in every business transaction. It is the Applicant that assumes this risk.

Whether a Standby Letter of Credit is intended to function as a guarantee or as a payment mechanism, the terms and conditions of the Issuing Bank’s relationship with its customer are established by the Application and Agreement, shown on page 51 (Illustration 15).

Citibank specialists can assist a customer in completing the Application and Agreement form. However, the customer must establish the terms and conditions that are satisfactory to it.

When the bank’s customer applies for credit, the bank must decide whether it will assume the credit risk and other risks arising from the issuance of the Standby Letter of Credit for the account of that customer. Once the application is signed by the customer and the risks to Citibank are accepted by Citibank in reliance on the application form, the Standby Letter of Credit is issued according to the application’s specifications.

Illustration 15 – Application and Agreement for Irrevocable Standby Letter of Credit¹

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Application for Standby Letter of Credit

Citibank, N.A., New York, NY 10043	Letter of Credit Reference No. _____
Attn: Standby Letter of Credit Dept., FLA-1, 2 / A	Applicant (Name and Address)
Advising Bank (Name and Address)	
Beneficiary (Name and Address)	Amount (In specific currency): _____
	Expiry Date and Place: _____

This Application is for the issuance of a standby letter of credit under and subject to the terms and conditions of (select one):

- ☐ The Agreement for Standby Letter of Credit attached hereto:
- ☐ The Continuing Agreement for Commercial and / or Standby Letters of Credit dated _____. *
- ☐ Other (describe): _____

Subject to the following terms and conditions, please issue your irrevocable Letter of Credit (hereinafter called the "Credit") to be available by the beneficiary's draft(s):

Drawn at sight on:

- ☐ Citibank, N.A., New York, NY



(Name and Address of Paying Bank, if any)

Accompanied by Beneficiary's written statement that the amount of any drafts(s) drawn hereunder represent funds due and payable because of the following reasons (select one):

- ☐ Applicant of the Credit has failed to comply with terms or conditions of a contract described as: _____
- _____
- ☐ Applicant of the Credit has been awarded a contract under an offer to bid and has failed to become a party to the contract related thereto describe): _____
- _____
- ☐ It has become necessary for the Beneficiary bank or other financial entity to make payment under its undertaking issued on behalf of Applicant of this Credit, with an expiration date of _____, at its counters, in favor of _____
- _____, in relation to _____
- _____.

* If a Continuing Agreement is already in place, submit only this Application, with customer's signature and account manager's approvals on page 2 of this form.

Illustration 16 – Standby Letter of Credit – IN LIEU OF A CONTRACT PERFORMANCE GUARANTEE

Citibank, N.A.
New York, New York

Irrevocable Standby Letter of Credit

November 26, 20__

Archer Construction Associates
456 South Street N.W.
London, England

Sirs:

At the request and for the account of Construction Associates, Milwaukee, Wisconsin, we hereby issue our Irrevocable Standby Letter of Credit No. 5499, in your favor, for an amount(s) not to exceed in the aggregate U.S. \$100,000.00, effective immediately and expiring on December 31, 20__.

Funds under this Letter of Credit are available to you against your sight draft(s) drawn on us, mentioning thereon our Letter of Credit No. 5499. Each such draft must be accompanied by your signed written statement that "Construction Associates has failed to comply with the terms and conditions of contract #56-71A dated December 15, 20__, for the construction of an Office Complex," specifying the paragraph(s) and/or clause(s) in default.

We hereby undertake with you to honor each presentation made in compliance with the terms of this Letter of Credit, if presented to us at Citicorp North America, Inc., Servicer for Citibank, N.A., 3800 Citibank Center, Bldg. F, 1st Floor, Suite 3000, Tampa, Florida 33610, or such other address as we may advise from time to time on or before the stated expiration date.

This Letter of Credit is subject to the International Standby Practices 1998, International Chambers of Commerce Publication No. 590 ("ISP98"), and as to matters not addressed by ISP98 is subject to and governed by New York State and applicable US federal law.

Sample Letter of Credit

Authorized Signature

Illustration 17 – Standby Letter of Credit – AS A PAYMENT MECHANISM

53

Citibank, N.A.
New York, New York

Irrevocable Standby Letter of Credit

January 3, 20__

Construction Associates
456 South 8th Street
Milwaukee, WI 12345

Sirs:

At the request and for the account of Archer Construction Associates, London, England we hereby issue our Irrevocable Standby Letter of Credit No. 5656, in your favor, for an amount(s) not to exceed in the aggregate U.S. \$200,000.00, effective immediately and expiring on December 31, 20__.

Funds under this Letter of Credit are available to you against your sight draft(s) drawn on us, mentioning thereon our Letter of Credit No. 5656. Each such draft must be accompanied by your signed written statement that "The amount of the draft being presented represents the full payment for unpaid invoices in accordance with the terms and conditions of Purchase Order No. 345-62."

We hereby undertake with you to honor each draft drawn under and in compliance with the terms of this Letter of Credit, if duly presented together with the documents specified to us at Citicorp North America, Inc., Servicer for Citibank, N.A., 3800 Citibank Center, Bldg. F, 1st Floor, Sort 3000, Tampa, Florida 33610 on or before the stated expiration date.

This Letter of Credit is subject to the International Standby Practices 1998, International Chambers of Commerce Publication No. 590 ("ISP98"), and as to matters not addressed by ISP98 is subject to and governed by New York State and applicable US federal law. International Chamber of Commerce's Uniform Customs and Practice for Documentary Credits in effect on the date this Letter of Credit is issued.

Sample Letter of Credit

Authorized Signature

Illustration 18 – Standby Letter of Credit – IN LIEU OF A BID PERFORMANCE GUARANTEE

Citibank, N.A.
New York, New York

Irrevocable Standby Letter of Credit

January 3, 20__

Archer Construction Associates
456 South Street N.W.
London, England

Sirs:

At the request and for the account of Construction Associates, Milwaukee, Wisconsin, we hereby issue our Irrevocable Standby Letter of Credit No. 5401, in your favor, for an amount(s) not to exceed in the aggregate U.S. \$224,000.00, effective immediately and expiring on December 31, 20__.

Funds under this Letter of Credit are available to you against your sight draft(s) drawn on us, mentioning thereon our Letter of Credit No. 5401. Each such draft must be accompanied by your signed written statement that "Construction Associates was duly tendered a contract for its signature under bid invitation No. 789-10 for the construction of a steel mill and failed to become a party thereto."

We hereby undertake with you to honor each presentation made in compliance with the terms of this Letter of Credit if presented to us at Citicorp North America, Inc., Servicer for Citibank, N.A., 3800 Citibank Center, Bldg. F, 1st Floor, Sort 3000, Tampa, Florida 33610 on or before the stated expiration date.

This Letter of Credit is subject to the International Standby Practices 1998, International Chambers of Commerce Publication No. 590 ("ISP98"), and as to matters not addressed by ISP98 is subject to and governed by New York State and applicable US federal law. International Chamber of Commerce's Uniform Customs and Practice for Documentary Credits in effect on the date this Letter of Credit is issued.

Sample Letter of Credit

Authorized Signature

Illustration 19 – Standby Letter of Credit

– PROTECTION FOR A BANK'S LOCAL UNDERTAKING WITH AN AUTOMATIC EXTENSION CLAUSE

55

Citibank, N.A.
New York, New York

Irrevocable Standby Letter of Credit

January 3, 20__

The Saudi Central Bank
Jeddah, Saudi Arabia

Sirs:

Associated T.V. Suppliers, St. Louis, Missouri, requests you to issue and deliver your undertaking in favor of The Overseas Imports Co. PLC, Jeddah, for an amount(s) not to exceed in the aggregate U.S. \$500,000.00, effective immediately and expiring at your office on December 20, 20__. The undertaking is relative to Associated T.V. Suppliers' performance under contract No. 75642A for the supply of three hundred model 24A color television sets.

In reimbursement of your payments under your above-mentioned undertaking, we hereby issue our Irrevocable Standby Letter of Credit No. 76123 in your favor for an amount(s) not to exceed in the aggregate U.S. \$500,000.00 effective immediately and expiring at your office on December 31, 20__. You are authorized to draw on us by authenticated telecommunication, indicating thereon our Letter of Credit No. 76123, indicating the amount drawn and stating that "It has become necessary for us to make payment under our undertaking issued on behalf of Associated T.V. Supplies, dated [insert date of Saudi Central Bank undertaking] in favor of The Overseas Imports Co., PLC."

It is a condition of this Letter of Credit that it will be automatically extended without amendment for periods of one year from the then relative stated expiry date, unless at least thirty (30) days prior to the relative stated expiry date we notify you by authenticated cable that we elect not to extend this Letter of Credit. At that time, you may draw your one sight draft on us for an amount not exceeding the unused balance of this Letter of Credit, mentioning our Letter of Credit No. 76123, accompanied by your signed statement that the funds so drawn will be utilized to cover any liability or expense incurred by you, as a result of your issuance of the above-mentioned undertaking and that you will refund to us the unused balance upon cancellation of your relative undertaking.

We hereby undertake with you to honor each authenticated telecommunication presented under and in compliance with the terms of this Letter of Credit, if presented to us by S.W.I.F.T. at CITIUS33 or by tested telex to Citibank, N.A. – NYLCE on or before the stated expiration date.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication 500 (the "UCP") and, as to matters not addressed by the UCP, is subject to and governed by New York State and applicable U.S. federal law.

Sample Letter of Credit

Authorized Signature

Examples of Typical Standby Letters of Credit

The terms and conditions contained in a Standby Letter of Credit vary based on the transaction. Standby Letters of Credit can be adapted to meet specific needs. The variety of illustrations shown below demonstrates the versatility of Standby Letters of Credit.

Each Standby Letter of Credit illustrated is addressed to a Beneficiary. The opening paragraph provides basic details, including the name of the Applicant, the amount, the expiration date, and the place of presentation.

The second and succeeding paragraphs contain the Standby Letter of Credit's documentary requirements. Each documentary requirement must be met exactly before the Beneficiary is entitled to payment.

The closing paragraphs state the Issuing Bank's undertaking to honor, e.g. by paying the Beneficiary or reimbursing a nominated bank, incorporate practice rules such as the UCP or the more recent and targeted International Standby Practices (ISP98), and choose the desired law governing the undertaking and forum for resolving disputes.

Bid and Performance Standbys

It is a common business practice for firms to bid on projects and material purchases and to accompany each bid with some form of collateral or assurance covering a percentage of the bid price. A Standby Letter of Credit may serve to assure that the bidder, if successful, will either become party to the contract or pay the percentage of the bid price available under the Standby Letter of Credit.

Illustration 18 on page 54 is an example of a bid guarantee Standby Letter of Credit. It enables the Applicant-Bidder to use the bank's credit instead of cash or other form of collateral to support the bid.

Some contracts require that the successful bidder also submit a performance guarantee. A Standby Letter of Credit in favor of the purchaser protects the purchaser against a default by the bidder. It is similar to a bid guarantee Standby Letter of Credit (Illustration 18), except that its required form of Beneficiary statement covers performance completion under the contract instead of the bid, as shown on page 52 (Illustration 16).

Overseas Bank Guarantees

Occasionally foreign laws and regulations require an overseas bank guarantee, which is a guarantee or other undertaking issued by one of the country's local banks in favor of one of its nationals (a citizen, company, or government agency).

To meet this requirement a U.S. firm could request that Citibank issue a Standby Letter of Credit in favor of a correspondent bank or branch located overseas. This type of Standby Letter of Credit, depicted in Illustration 19 on page 55, serves to protect the overseas bank or branch in the issuance of its local guarantee or other undertaking. The overseas bank will be entitled to draw under the Standby Letter of Credit by presenting its own statement that it was required to disburse the amount drawn under its local guarantee or undertaking.

Care must be exercised in negotiating contracts requiring overseas bank guarantees. In some countries, local laws may provide that a guarantee or other undertaking covering a contract cannot be terminated prior to the termination of the contract itself, or, in many cases, prior to the Beneficiary's formal acceptance of the product or service to which the guarantee relates. Consequently, a Standby Letter of Credit issued to protect a local bank's issuance of its guarantee or other undertaking may not expire on the stated expiration date. This means that the Applicant cannot be released from its obligation until all the intermediary banks have been released.

A Standby Letter of Credit of this type should have an expiration date not earlier than the expiration date of the underlying contract, or if the expiry of the Standby Letter of Credit precedes the expiry of the contract, it should outline provisions for the local Beneficiary bank to draw. If the local guarantee or other undertaking has not been terminated, the Standby Letter of Credit in favor of the local bank may need to be extended for one or more additional periods. If not extended, the terms of the Standby Letter of Credit may permit the local bank to draw on the Standby Letter of Credit to ensure itself sufficient funds to cover potential future drawings under its local guarantee or other undertaking.

Although a U.S. bank may not be willing to issue a Standby Letter of Credit on a long-term basis (covering contracts continuing for a year or more), Standby Letter of Credit terms can permit extensions of the expiration

Citibank, N.A.
New York, New York

Irrevocable Standby Letter of Credit

January 3, 20__

The Standard Surety Co.
Sullivan Street
Newtown, VA 66534

Sirs:

At the request and for the account of Norman Steamship Lines, Newport, Rhode Island, we hereby issue our Irrevocable Standby Letter of Credit No. 34692 in your favor for an amount(s) not to exceed in the aggregate U.S. \$500,000.00, effective immediately and expiring at our office on December 31, 20__.

This Letter of Credit relates to the issuance of your bond(s) or undertaking(s) in favor of Drydock Piers Ltd., San Diego, California, on behalf of our client Norman Steamship Lines, concerning to any damages which may occur to Drydock Piers Ltd., pier #97 by the tanker S.S. Butane.

Funds under this Letter of Credit are available to you against your sight draft(s) drawn on us, mentioning thereon our Letter of Credit number 34692. Each such draft must be accompanied by your signed statement to the effect that you have incurred a loss, liability, expense and/or legal fees as a result of your issuing said bond(s) or undertaking(s) as described above.

It is a condition of this Letter of Credit that it will be automatically extended without amendment for periods of one year from the then relative stated expiry date, unless at least thirty (30) days prior to the relative stated expiry date we notify you by registered mail that we elect not to extend this Letter of Credit. At that time, you may draw your one sight draft on us for an amount not exceeding the unused balance of this Letter of Credit, mentioning our Letter of Credit No. 34692, accompanied by your signed statement that the funds so drawn will be utilized to cover any loss, liability, expense and/or legal fees incurred by you as a result of your issuance of the above-mentioned bond or undertaking and that you will refund to us the unused balance upon cancellation of your relative bond or undertaking.

We hereby undertake with you to honor each draft drawn under and in compliance with the terms of this Letter of Credit, if presented on or before the stated expiration date at Citicorp North America, Inc., Servicer for Citibank, N.A., 3800 Citibank Center, Bldg. F, 1st Floor, Sort 3000, Tampa, Florida 33610.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication 500 (the "UCP") and, as to matters not addressed by the UCP, is subject to and governed by New York State and applicable U.S. federal law.

Sample Letter of Credit

Authorized Signature

Illustration 21 – Standby Letter of Credit – ESCROW ARRANGEMENT

Citibank, N.A.
New York, New York

Irrevocable Standby Letter of Credit

January 3, 20__

The Finer Realty Corp.
456 South Wacker Drive
Chicago, IL 30012

Sirs:

At the request and for the account of Hotel Enterprise Corporation, New York, we hereby issue our Irrevocable Standby Letter of Credit No. 84563 in your favor, for an amount(s) not to exceed in the aggregate U.S. \$2,000,000.00, effective immediately and expiring on October 31, 20__.

Funds under this Letter of Credit are available to you against your sight draft(s) drawn on us, mentioning thereon our Letter of Credit No. 84563, in accordance with the following schedule of payments:

- 1) U.S. \$1,000,000.00 beginning on April 1, 20__ and up to and including April 20, 20__, accompanied by your signed statement that “the amount of said draft represents the first installment for the purchase of the Hotel Dixie, New Orleans.”
- 2) U.S. \$1,000,000.00 beginning on October 1, 20__ and up to and including October 20, 20__, accompanied by your signed statement that “the amount of said draft represents the final installment for the purchase of the Hotel Dixie, New Orleans.”

We hereby undertake with you to honor each draft drawn under and in compliance with the terms of this Letter of Credit, if presented to us together with the documents specified on or before the stated expiration date at Citicorp North America, Inc., Servicer for Citibank, N.A., 3800 Citibank Center, Bldg. F, 1st Floor, Sort 3000, Tampa, Florida 33610, or such other address as we may advise from time to time.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication 500 (the “UCP”) and, as to matters not addressed by the UCP, is subject to and governed by New York State and applicable U.S. federal law.

Sample Letter of Credit

Authorized Signature

date on a year-to-year basis. This extension clause is known as an “automatic extension clause” or an “evergreen clause.” An example of an automatic extension clause appears in Illustration 19 on page 55.

Letter of Credit Support for Surety Bonds

Contracts, government regulations, and court proceedings sometimes require one party to post a surety or indemnity bond. The primary issuers of the bonds are insurance and surety companies. The party required to post bond applies for the bond. If the Applicant’s financial status is unknown to the bonding company, it may require that the Applicant obtain a Standby Letter of Credit issued in its favor as protection. This step shifts financial risk associated with the bond amount from the surety company to the bank issuing the Standby Letter of Credit. A Standby Letter of Credit issued in favor of a surety company is shown on page 57, Illustration 20.

Standby Letters of Credit as a Payment Mechanism

Standby Letters of Credit used as payment mechanisms can be tailored to meet almost any need to provide a Beneficiary with funds with or without complicated terms and conditions. These Letters of Credit may be used to provide for progress payments, salary payments or payment of other business expenses. Drawings typically require a signed statement by the Beneficiary attesting to the fact that it has complied with the conditions necessary to qualify for the payment. Illustration 17 on page 55 is a payment type Standby Letter of Credit issued in an irrevocable form in which the Issuing Bank has committed to pay the Beneficiary upon presentation of a simple statement and a draft.

Escrow Arrangements

The use of escrow accounts to segregate cash or securities in which more than one party has an interest is a familiar device for certain types of business transactions. Standby Letters of Credit such as Illustration 21 on page 58 can often be adapted to serve in lieu of an escrow account.

Securities Purchases

The sale of securities is frequently a cash transaction with delivery against payment. However, there are transactions where the securities holder wishes to contract for the sale at a selling price established today—with delivery and payment to be made at a future date. Thus, if the Beneficiary presents conforming documents, the Standby Letter of Credit assures that payment for the securities will be made. Illustration 22 on page 60 shows the use of a Standby Letter of Credit covering a purchase of securities.

Municipal Bonds

Standby Letters of Credit are used to enhance the credit rating of municipal and other bonds and notes and may be structured as either a guarantee type or payment type Standby Letter of Credit. By substituting the bank’s stronger credit rating for that of the bond issuer, the bonds will receive an enhanced credit rating and may be marketed at lower rates.

Reinsurance

Standby Letters of Credit are frequently used to meet insurance industry requirements. The precise form of such undertakings may be dictated by the insurer’s regulators. Illustration 23 on page 61 is a typical Standby Letter of Credit supporting the obligations of a reinsurer to an insurer.

Revocable Letters of Credit

Most Standby Letters of Credit are issued in irrevocable form. However, there are instances where the bank’s customer wants to retain a termination privilege. In this event the revocable form, Illustration 24 on page 62, is suitable. If payment is restricted to the office of the issuing bank, then it incurs no obligation to pay before it receives a presentation and decides in its discretion to pay. From the Beneficiary’s perspective, a Standby Letter of Credit issued in revocable form is not actually a bank credit, but rather a payment arrangement which can be terminated at the Issuing Bank’s option (or, more likely, its customer’s). The Beneficiary’s consent to the cancellation of a Revocable Letter of Credit is not required.

Illustration 22 – Standby Letter of Credit – PURCHASE OR SALE OF SECURITIES

Citibank, N.A.
New York, New York

Irrevocable Standby Letter of Credit

October 3, 20__

The Securities Sales Corp.
100 Wall Street
New York, NY 10018

Sirs:

At the request and for the account of Peter Brown Associates, New York, NY, we hereby issue our Irrevocable Standby Letter of Credit No. 30012 in your favor, for an amount(s) not to exceed in the aggregate U.S. \$3,500,000.00, effective immediately and expiring at our office on January 6, 20__.

Funds under this Letter of Credit are available to you, from time to time, against a receipt for the amount being drawn, under Letter of Credit Number 30012. Accompanying this receipt must be your signed statement that “the amount being drawn does not exceed the product resulting from multiplying the number of Shares then being presented by \$35.00.”

Each receipt must also be accompanied by one or more certificates for shares of common stock, \$1.00 par value, of the “Amblac Corporation” (the shares purportedly represented by such certificates being herein called “Shares”), each certificate bearing an endorsement in blank by the registered owner thereof, such signature or signatures, in the event, to appear to be guaranteed by a commercial bank or trust company having an office or correspondent in New York City or by a purported member of the New York Stock Exchange.

We hereby undertake with you to honor each presentation made in compliance with the terms of this Letter of Credit, if presented to us on or before the stated expiration date at Citicorp North America, Inc., Servicer for Citibank, N.A., 3800 Citibank Center, Bldg. F, 1st Floor, Sort 3000, Tampa, Florida 33610, or such other address as we may advise from time to time.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication 500 (the “UCP”) and, as to matters not addressed by the UCP, is subject to and governed by New York State and applicable U.S. federal law.

Sample Letter of Credit

Authorized Signature

Illustration 23 – Standby Irrevocable Letter of Credit – REINSURANCE

61

Citibank, N.A.
111 Wall Street, New York, New York 10043

Irrevocable Standby Letter of Credit

May 10, 20__

ONLY

Quinn Kelly Insurance Co.
3 Park Avenue
New York, New York 10005

FOR INTERNAL IDENTIFICATION

Citibank Ref. No. 12345678
Issuer's Reference No. 0001234

By order of:
Citibank London
Insurance Dept.
London, England

At the request of:
Fan Smith Limited
Transaction Reference No.: 7171947

Dear Sirs:

We hereby establish this irrevocable and unconditional Standby Letter of Credit in favor of the aforesaid addressee ("Beneficiary") for drawings up to U.S.\$96,239.92, effective immediately. This Letter of Credit is issued, presentable and payable at our office shown above or such other office as we may advise from time to time, and expires with our close of business on August 31, 20__.

The term "Beneficiary" includes any successor by operation of law of the named Beneficiary, including, without limitation, any liquidator, rehabilitator, receiver, or conservator.

We hereby undertake to promptly honor your sight draft(s) drawn on us, indicating our Letter of Credit No. 12345678, for all or any part of this Letter of Credit, if presented at our office specified in paragraph one or such other office as we may advise from time to time, on or before the expiry date or any automatically extended expiry date.

Except as expressly stated herein, this undertaking is not subject to any agreement, condition or qualification. The obligation of Citibank, N.A. under this Letter of Credit is the individual obligation of Citibank, N.A., and is in no way contingent upon reimbursement with respect thereto.

It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for one year from the expiry date hereof, or any future expiration date, unless thirty (30) days prior to any expiration date we notify you by Registered Mail that we elect not to consider this Letter of Credit renewed for any such additional period.

This Letter of Credit is subject to and governed by the laws of the State of New York and the Uniform Customs and Practice for Documentary Credits (1993 Revision) Publication 500 (the "UCP") and, in the event of any conflict, the laws of the State of New York will control. If this Letter of Credit expires during an interruption of business as described in Article 17 of the UCP, we hereby specifically agree to effect payment if this Letter of Credit is drawn against within thirty days after the resumption of our business.

Sample Letter of Credit

Authorized Signature

Illustration 24 – Revocable Standby Letter of Credit – SCHEDULED PAYMENT

Citibank, N.A.
New York, New York

Revocable Standby Letter of Credit

November 3, 2000

Mr. John Doe
3115 First Boulevard
Kansas City, KS 72320

Sirs:

At the request and for the account of John Smith, New York, NY, we hereby issue our Revocable Standby Letter of Credit No. 10354 in your favor, for an amount(s) not to exceed in the aggregate U.S. \$12,000.00, available at the rate of \$1,000.00 per calendar month, non-cumulative effective January 1, 2001 and expiring on December 31, 2001, unless sooner revoked.

Funds under this Letter of Credit are available to you, from time to time, against your sight draft(s) drawn on us, mentioning thereon our Letter of Credit No. 10354 presented to us at Citicorp North America, Inc., Servicer for Citibank, N.A., 3800 Citibank Center, Bldg. F, 1st Floor, Sort 3000, Tampa, Florida 33610.

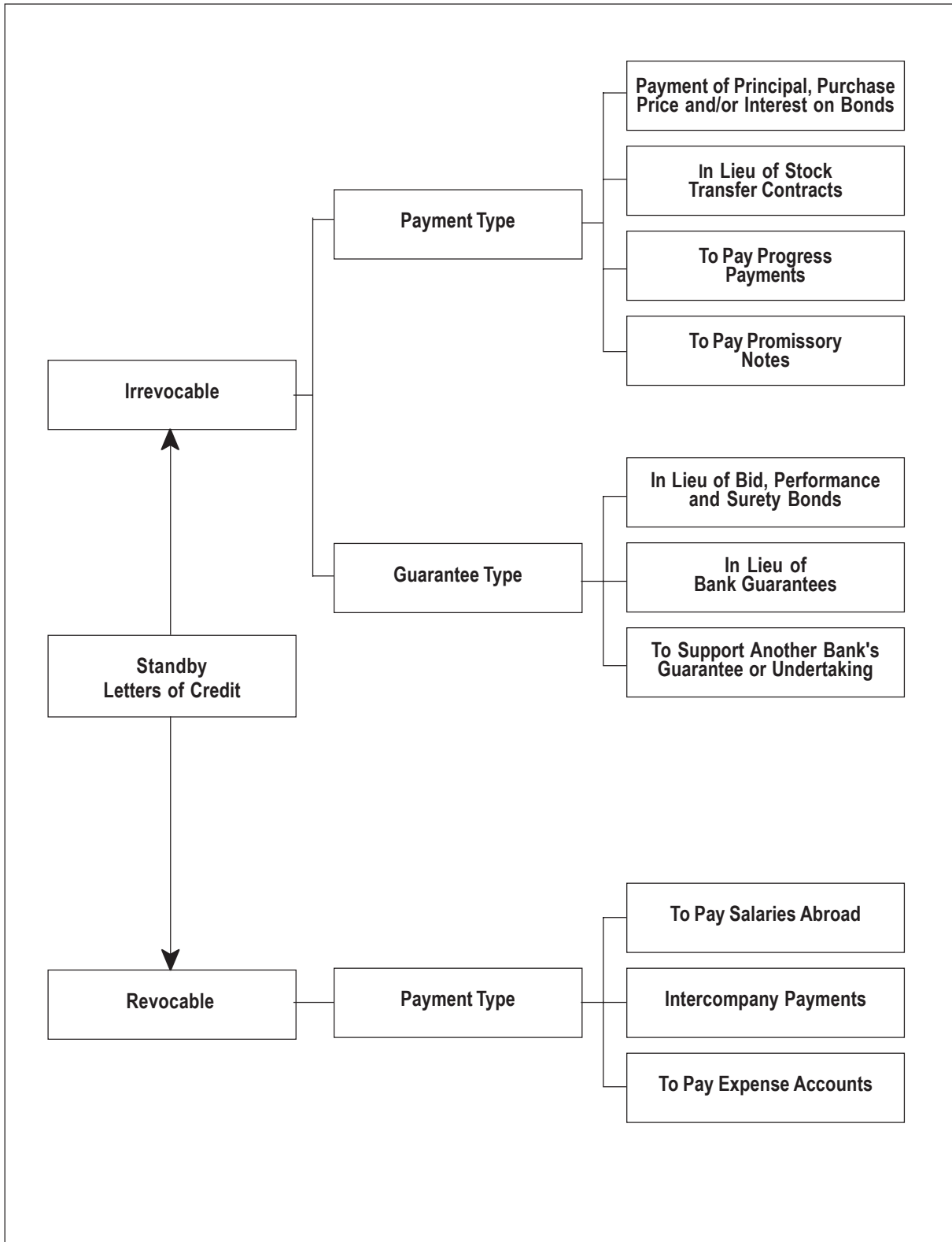
This Letter of Credit is subject to revocation or modification at any time without notice to you and conveys no engagement on our part.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication 500 (the “UCP”) and, as to matters not addressed by the UCP, is subject to and governed by New York State and applicable U.S. federal law.

Sample Letter of Credit

Authorized Signature

Illustration 25 – Summary of Standby Letters of Credit





LETTERS OF CREDIT

The Rules

This booklet has referred throughout to rules or guidelines adhered to by banks internationally. The following publications can be obtained by contacting the International Chamber of Commerce, either ICC Publishing Inc. at 156 Fifth Avenue, Suite 417, New York, NY 10010, e-mail: info@iccpub.net, or ICC Publishing S.A. at 38 Cours Albert 1er, 75008 Paris, France, e-mail: pub@iccwbo.org or its Web site: www.iccwbo.org:

- *Uniform Customs and Practice for Documentary Credits* - (ICC Publication 500) - This is the 1993 revision of the compilation of international customs and practice relating to commercial letters of credit known as “UCP 500.”
- *International Standard Banking Practice* - (ICC Publication 645) – This explains how the practices articulated in ICC’s *Uniform Customs and Practice for Documentary Credits* are applied in everyday practice by documentary credit practitioners around the world and is known as “ISBP.”
- *International Standby Practices* - (ICC Publication 590) - This is the 1998 compilation of international customs and practice relating to standby letters of credit known as “ISP98.”
- *Uniform Rules for Bank-to-Bank Reimbursements* - (ICC Publication 525) - This is a compilation of international rules for bank-to-bank reimbursements relating to letters of credit known as “URR 525.”
- *Uniform Rules for Collections* – (ICC Publication 522) – This is a practical set of rules to aid bankers, buyers, and sellers in the collections process. The rules have been prepared to resolve problems that practitioners have experienced in their everyday operations and are known as “URC 522.”

The following publication can be obtained by contacting the International Center for Letter of Credit Arbitration, Inc., 9158 Rothbury Drive, No. 189, Gaithersburg, MD 20886:

- *International Center for Letter of Credit Arbitration, Inc. Rules of Arbitration* - This is a booklet of rules to be followed in letter of credit arbitrations administered by the Center. The rules are based on the UNCITRAL Rules of Arbitration.

The following publications are copyrighted by the International Chamber of Commerce and are used by permission:

UCP 500, URC 522, URR 525, ISBP 645, and ISP98.

The following publication is copyrighted by the International Center for Letter of Credit Arbitration, Inc. and used by permission:

International Center for Letter of Credit Arbitration, Inc. (ICLOCA) Rules of Arbitration.

THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (UCP)

This updated and expanded version first published in Jan 2002.

The Uniform Customs and Practice for Documentary Credits (UCP) were first published by ICC in 1933. Revised versions were issued in 1951, 1962, 1974, 1983 and 1993. This edition includes the full text of the 1993 revision, which was adopted by the ICC Executive Board in April 1993 and first published as ICC Publication No. 500 in May 1993. It also includes for the first time the Supplement to UCP 500 for Electronic Presentation (eUCP).

A. GENERAL PROVISIONS AND DEFINITIONS

Article 1

Application of UCP

The Uniform Customs and Practice for Documentary Credits, 1993 Revision, ICC Publication No. 500, shall apply to all Documentary Credits (including to the extent to which they may be applicable, Standby Letter(s) of Credit) where they are incorporated into the text of the Credit.

They are binding on all parties thereto, unless otherwise expressly stipulated in the Credit.

Article 2

Meaning of Credit

For the purposes of these Articles, the expressions "Documentary Credit(s)" and "Standby Letter(s) of Credit" (hereinafter referred to as "Credit(s)"), mean any arrangement, however named or described, whereby a bank (the "Issuing Bank") acting at the request and on the instructions of a customer (the "Applicant") or on its own behalf,

- i. is to make a payment to or to the order of a third party (the "Beneficiary"), or is to accept and pay bills of exchange (Draft(s)) drawn by the Beneficiary, or
- ii. authorises another bank to effect such payment, or to accept and pay such bills of exchange (Draft(s)), or
- iii. authorises another bank to negotiate, against stipulated document(s), provided that the terms and conditions of the Credit are complied with.

For the purposes of these Articles, branches of a bank in different countries are considered another bank.

Article 3

Credits v. Contracts

- a Credits, by their nature, are separate transactions from the sales or other contract(s) on which they may be based and

banks are in no way concerned with or bound by such contract(s), even if any reference whatsoever to such contract(s) is included in the Credit.

Consequently, the undertaking of a bank to pay, accept and pay Draft(s) or negotiate and/or to fulfil any other obligation under the Credit, is not subject to claims or defences by the Applicant resulting from his relationships with the Issuing Bank or the Beneficiary.

- b A Beneficiary can in no case avail himself of the contractual relationships existing between the banks or between the Applicant and the Issuing Bank.

Article 4

Documents v. Goods/Services/Performances

In Credit operations all parties concerned deal with documents, and not with goods, services and/or other performances to which the documents may relate.

Article 5

Instructions to Issue/Amend Credits

a Instructions for the issuance of a Credit, the Credit itself, instructions for an amendment thereto, and the amendment itself, must be complete and precise. In order to guard against confusion and misunderstanding, banks should discourage any attempt:

- i. to include excessive detail in the Credit or in any amendment thereto;
- ii. to give instructions to issue, advise or confirm a Credit by reference to a Credit previously issued (similar Credit) where such previous Credit has been subject to accepted amendment(s), and/or unaccepted amendment(s).

b All instructions for the issuance of a Credit and the Credit itself and, where applicable, all instructions for an amendment thereto and the amendment itself, must state precisely the document(s) against which payment, acceptance or negotiation is to be made.

B. FORM AND NOTIFICATION OF CREDITS

Article 6

Revocable v. Irrevocable Credits

a A Credit may be either

- i. revocable,
- or
- ii. irrevocable.

b The Credit, therefore, should clearly indicate whether it is revocable or irrevocable.

c In the absence of such indication the Credit shall be deemed to be irrevocable.

Article 7

Advising Bank's Liability

- a A Credit may be advised to a Beneficiary through another bank (the "Advising Bank") without engagement on the part of the Advising Bank, but that bank, if it elects to advise the Credit, shall take reasonable care to check the apparent authenticity of the Credit which it advises. If the bank elects not to advise the Credit, it must so inform the Issuing Bank without delay.
- b If the Advising Bank cannot establish such apparent authenticity it must inform, without delay, the bank from which the instructions appear to have been received that it has been unable to establish the authenticity of the Credit and if it elects nonetheless to advise the Credit it must inform the Beneficiary that it has not been able to establish the authenticity of the Credit.

Article 8

Revocation of a Credit

- a A revocable Credit may be amended or cancelled by the Issuing Bank at any moment and without prior notice to the Beneficiary.
- b However, the Issuing Bank must:
 - i. reimburse another bank with which a revocable Credit has been made available for sight payment, acceptance or negotiation – for any payment, acceptance or negotiation made by such bank – prior to receipt by it of notice of amendment or cancellation, against documents which appear on their face to be in compliance with the terms and conditions of the Credit;
 - ii. reimburse another bank with which a revocable Credit has been made available for deferred payment, if such a bank has, prior to receipt by it of notice of amendment or cancellation, taken up documents which appear on their face to be in compliance with the terms and conditions of the Credit.

Article 9

Liability of Issuing and Confirming Banks

- a An irrevocable Credit constitutes a definite undertaking of the Issuing Bank, provided that the stipulated documents are presented to the Nominated Bank or to the Issuing Bank and that the terms and conditions of the Credit are complied with:
 - i. if the Credit provides for sight payment – to pay at sight;
 - ii. if the Credit provides for deferred payment – to pay on the maturity date(s) determinable in accordance with the stipulations of the Credit;
 - iii. if the Credit provides for acceptance:
 - a) by the Issuing Bank – to accept Draft(s) drawn by the Beneficiary on the Issuing Bank and pay them at maturity,
 - or
 - b) by another drawee bank – to accept and pay at maturity Draft(s) drawn by the Beneficiary on the Issuing Bank in the event the drawee bank stipulated in the Credit does not accept Draft(s) drawn on it, or to pay Draft(s) accepted but not paid by such drawee bank at maturity;

- iv. if the Credit provides for negotiation – to pay without recourse to drawers and/or bona fide holders, Draft(s) drawn by the Beneficiary and/or document(s) presented under the Credit. A Credit should not be issued available by Draft(s) on the Applicant. If the Credit nevertheless calls for Draft(s) on the Applicant, banks will consider such Draft(s) as an additional document(s).
- b A confirmation of an irrevocable Credit by another bank (the "Confirming Bank") upon the authorisation or request of the Issuing Bank, constitutes a definite undertaking of the Confirming Bank, in addition to that of the Issuing Bank, provided that the stipulated documents are presented to the Confirming Bank or to any other Nominated Bank and that the terms and conditions of the Credit are complied with:
 - i. if the Credit provides for sight payment – to pay at sight;
 - ii. if the Credit provides for deferred payment – to pay on the maturity date(s) determinable in accordance with the stipulations of the Credit;
 - iii. if the Credit provides for acceptance:
 - a) by the Confirming Bank – to accept Draft(s) drawn by the Beneficiary on the Confirming Bank and pay them at maturity,
 - or
 - b) by another drawee bank – to accept and pay at maturity Draft(s) drawn by the Beneficiary on the Confirming Bank, in the event the drawee bank stipulated in the Credit does not accept Draft(s) drawn on it, or to pay Draft(s) accepted but not paid by such drawee bank at maturity;
 - iv. if the Credit provides for negotiation – to negotiate without recourse to drawers and/or bona fide holders, Draft(s) drawn by the Beneficiary and/or document(s) presented under the Credit. A Credit should not be issued available by Draft(s) on the Applicant. If the Credit nevertheless calls for Draft(s) on the Applicant, banks will consider such Draft(s) as an additional document(s).
- c i. If another bank is authorised or requested by the Issuing Bank to add its confirmation to a Credit but is not prepared to do so, it must so inform the Issuing Bank without delay.
- ii. Unless the Issuing Bank specifies otherwise in its authorisation or request to add confirmation, the Advising Bank may advise the Credit to the Beneficiary without adding its confirmation.
- d i. Except as otherwise provided by Article 48, an irrevocable Credit can neither be amended nor cancelled without the agreement of the Issuing Bank, the Confirming Bank, if any, and the Beneficiary.
- ii. The Issuing Bank shall be irrevocably bound by an amendment(s) issued by it from the time of the issuance of such amendment(s). A Confirming Bank may extend its confirmation to an amendment and shall be irrevocably bound as of the time of its advice of the amendment. A Confirming Bank may, however, choose to advise an amendment to the Beneficiary without extending its confirmation and if so, must inform the Issuing Bank and the Beneficiary without delay.

- iii. The terms of the original Credit (or a Credit incorporating previously accepted amendment(s)) will remain in force for the Beneficiary until the Beneficiary communicates his acceptance of the amendment to the bank that advised such amendment. The Beneficiary should give notification of acceptance or rejection of amendment(s). If the Beneficiary fails to give such notification, the tender of documents to the Nominated Bank or Issuing Bank, that conform to the Credit and to not yet accepted amendment(s), will be deemed to be notification of acceptance by the Beneficiary of such amendment(s) and as of that moment the Credit will be amended.
- iv. Partial acceptance of amendments contained in one and the same advice of amendment is not allowed and consequently will not be given any effect.

Article 10

Types of Credit

- a All Credits must clearly indicate whether they are available by sight payment, by deferred payment, by acceptance or by negotiation.
- b i. Unless the Credit stipulates that it is available only with the Issuing Bank, all Credits must nominate the bank (the "Nominated Bank") which is authorised to pay, to incur a deferred payment undertaking, to accept Draft(s) or to negotiate. In a freely negotiable Credit, any bank is a Nominated Bank.

Presentation of documents must be made to the Issuing Bank or the Confirming Bank, if any, or any other Nominated Bank.
- ii. Negotiation means the giving of value for Draft(s) and/or document(s) by the bank authorised to negotiate. Mere examination of the documents without giving of value does not constitute a negotiation.
- c Unless the Nominated Bank is the Confirming Bank, nomination by the Issuing Bank does not constitute any undertaking by the Nominated Bank to pay, to incur a deferred payment undertaking, to accept Draft(s), or to negotiate. Except where expressly agreed to by the Nominated Bank and so communicated to the Beneficiary, the Nominated Bank's receipt of and/or examination and/or forwarding of the documents does not make that bank liable to pay, to incur a deferred payment undertaking, to accept Draft(s), or to negotiate.
- d By nominating another bank, or by allowing for negotiation by any bank, or by authorising or requesting another bank to add its confirmation, the Issuing Bank authorises such bank to pay, accept Draft(s) or negotiate as the case may be, against documents which appear on their face to be in compliance with the terms and conditions of the Credit and undertakes to reimburse such bank in accordance with the provisions of these Articles.

Article 11

Teletransmitted and Pre-Advised Credits

- a i. When an Issuing Bank instructs an Advising Bank by an authenticated teletransmission to advise a Credit or an amendment to a Credit, the teletransmission will be deemed to be the operative Credit instrument or the operative amendment, and no mail confirmation should be

sent. Should a mail confirmation nevertheless be sent, it will have no effect and the Advising Bank will have no obligation to check such mail confirmation against the operative Credit instrument or the operative Credit instrument or the operative amendment received by teletransmission.

- ii. If the teletransmission states "full details to follow" (or words of similar effect) or states that the mail confirmation is to be the operative Credit instrument or the operative amendment, then the teletransmission will not be deemed to be the operative Credit instrument or the operative amendment. The Issuing Bank must forward the operative Credit instrument or the operative amendment to such Advising Bank without delay.
- b If a bank uses the services of an Advising Bank to have the Credit advised to the Beneficiary, it must also use the services of the same bank for advising an amendment(s).
- c A preliminary advice of the issuance or amendment of an irrevocable Credit (pre-advice), shall only be given by an Issuing Bank if such bank is prepared to issue the operative Credit instrument or the operative amendment thereto. Unless otherwise stated in such preliminary advice by the Issuing Bank, an Issuing Bank having given such pre-advice shall be irrevocably committed to issue or amend the Credit, in terms not inconsistent with the pre-advice, without delay.

Article 12

Incomplete or Unclear Instructions

If incomplete or unclear instructions are received to advise, confirm or amend a Credit, the bank requested to act on such instructions may give preliminary notification to the Beneficiary for information only and without responsibility. This preliminary notification should state clearly that the notification is provided for information only and without the responsibility of the Advising Bank. In any event, the Advising Bank must inform the Issuing Bank of the action taken and request it to provide the necessary information.

The Issuing Bank must provide the necessary information without delay. The Credit will be advised, confirmed or amended, only when complete and clear instructions have been received and if the Advising Bank is then prepared to act on the instructions.

C. LIABILITIES AND RESPONSIBILITIES

Article 13

Standard for Examination of Documents

- a Banks must examine all documents stipulated in the Credit with reasonable care, to ascertain whether or not they appear, on their face, to be in compliance with the terms and conditions of the Credit. Compliance of the stipulated documents on their face with the terms and conditions of the Credit, shall be determined by international standard banking practice as reflected in these Articles. Documents which appear on their face to be inconsistent with one another will be considered as not appearing on their face to be in compliance with the terms and conditions of the Credit. Documents not stipulated in the Credit will not be examined by banks. If they receive such documents, they shall return them to the presenter or pass them on without responsibility.

- b The Issuing Bank, the Confirming Bank, if any, or a Nominated Bank acting on their behalf, shall each have a reasonable time, not to exceed seven banking days following the day of receipt of the documents, to examine the documents and determine whether to take up or refuse the documents and to inform the party from which it received the documents accordingly.
- c If a Credit contains conditions without stating the document(s) to be presented in compliance therewith, banks will deem such conditions as not stated and will disregard them.

Article 14

Discrepant Documents and Notice

- a When the Issuing Bank authorises another bank to pay, incur a deferred payment undertaking, accept Draft(s), or negotiate against documents which appear on their face to be in compliance with the terms and conditions of the Credit, the Issuing Bank and the Confirming Bank, if any, are bound:
 - i. to reimburse the Nominated Bank which has paid, incurred a deferred payment undertaking, accepted Draft(s), or negotiated,
 - ii. to take up the documents.
- b Upon receipt of the documents the Issuing Bank and/or Confirming Bank, if any, or a Nominated Bank acting on their behalf, must determine on the basis of the documents alone whether or not they appear on their face to be in compliance with the terms and conditions of the Credit. If the documents appear on their face not to be in compliance with the terms and conditions of the Credit, such banks may refuse to take up the documents.
- c If the Issuing Bank determines that the documents appear on their face not to be in compliance with the terms and conditions of the Credit, it may in its sole judgment approach the Applicant for a waiver of the discrepancy(ies). This does not, however, extend the period mentioned in sub-Article 13 (b).
- d i. If the Issuing Bank and/or Confirming Bank, if any, or a Nominated Bank acting on their behalf, decides to refuse the documents, it must give notice to that effect by telecommunication or, if that is not possible, by other expeditious means, without delay but no later than the close of the seventh banking day following the day of receipt of the documents.

Such notice shall be given to the bank from which it received the documents, or to the Beneficiary, if it received the documents directly from him.

- ii. Such notice must state all discrepancies in respect of which the bank refuses the documents and must also state whether it is holding the documents at the disposal of, or is returning them to, the presenter.
- iii. The Issuing Bank and/or Confirming Bank, if any, shall then be entitled to claim from the remitting bank refund, with interest, of any reimbursement which has been made to that bank.
- e If the Issuing Bank and/or Confirming Bank, if any, fails to act in accordance with the provisions of this Article and/or fails to hold the documents at the disposal of, or return them to the presenter, the Issuing Bank and/or Confirming

Bank, if any, shall be precluded from claiming that the documents are not in compliance with the terms and conditions of the Credit.

- f If the remitting bank draws the attention of the Issuing Bank and/or Confirming Bank, if any, to any discrepancy(ies) in the document(s) or advises such banks that it has paid, incurred a deferred payment undertaking, accepted Draft(s) or negotiated under reserve or against an indemnity in respect of such discrepancy(ies), the Issuing Bank and/or Confirming Bank, if any, shall not be thereby relieved from any of their obligations under any provision of this Article.

Such reserve or indemnity concerns only the relations between the remitting bank and the party towards whom the reserve was made, or from whom, or on whose behalf, the indemnity was obtained.

Article 15

Disclaimer on Effectiveness of Documents

Banks assume no liability or responsibility for the form, sufficiency, accuracy, genuineness, falsification or legal effect of any document(s), or for the general and/or particular conditions stipulated in the document(s) or superimposed thereon; nor do they assume any liability or responsibility for the description, quantity, weight, quality, condition, packing, delivery, value or existence of the goods represented by any document(s), or for the good faith or acts and/or omissions, solvency, performance or standing of the consignors, the carriers, the forwarders, the consignees or the insurers of the goods, or any other person whomsoever.

Article 16

Disclaimer on the Transmission of Messages

Banks assume no liability or responsibility for the consequences arising out of delay and/or loss in transit of any message(s), letter(s) or document(s), or for delay, mutilation or other error(s) arising in the transmission of any telecommunication. Banks assume no liability or responsibility for errors in translation and/or interpretation of technical terms, and reserve the right to transmit Credit terms without translating them.

Article 17

Force Majeure

Banks assume no liability or responsibility for the consequences arising out of the interruption of their business by Acts of God, riots, civil commotions, insurrections, wars or any other causes beyond their control, or by any strikes or lockouts. Unless specifically authorised, banks will not, upon resumption of their business, pay, incur a deferred payment undertaking, accept Draft(s) or negotiate under Credits which expired during such interruption of their business.

Article 18

Disclaimer for Acts of an Instructed Party

- a Banks utilizing the services of another bank or other banks for the purpose of giving effect to the instructions of the Applicant do so for the account and at the risk of such Applicant.
- b Banks assume no liability or responsibility should the instructions they transmit not be carried out, even if they

have themselves taken the initiative in the choice of such other bank(s).

- c i. A party instructing another party to perform services is liable for any charges, including commissions, fees, costs or expenses incurred by the instructed party in connection with its instructions.
- ii. Where a Credit stipulates that such charges are for the account of a party other than the instructing party, and charges cannot be collected, the instructing party remains ultimately liable for the payment thereof.
- d The Applicant shall be bound by and liable to indemnify the banks against all obligations and responsibilities imposed by foreign laws and usages.

Article 19

Bank-to-Bank Reimbursement Arrangements

- a If an Issuing Bank intends that the reimbursement to which a paying, accepting or negotiating bank is entitled, shall be obtained by such bank (the "Claiming Bank"), claiming on another party (the "Reimbursing Bank"), it shall provide such Reimbursing Bank in good time with the proper instructions or authorisation to honour such reimbursement claims.
- b Issuing Banks shall not require a Claiming Bank to supply a certificate of compliance with the terms and conditions of the Credit to the Reimbursing Bank.
- c An Issuing Bank shall not be relieved from any of its obligations to provide reimbursement if and when reimbursement is not received by the Claiming Bank from the Reimbursing Bank.
- d The Issuing Bank shall be responsible to the Claiming Bank for any loss of interest if reimbursement is not provided by the Reimbursing Bank on first demand, or as otherwise specified in the Credit, or mutually agreed, as the case may be.
- e The Reimbursing Bank's charges should be for the account of the Issuing Bank. However, in cases where the charges are for the account of another party, it is the responsibility of the Issuing Bank to so indicate in the original Credit and in the reimbursement authorisation. In cases where the Reimbursing Bank's charges are for the account of another party they shall be collected from the Claiming Bank when the Credit is drawn under. In cases where the Credit is not drawn under, the Reimbursing Bank's charges remain the obligation of the Issuing Bank.

D. DOCUMENTS

Article 20

Ambiguity as to the Issuers of Documents

- a Terms such as "first class", "well known", "qualified", "independent", "official", "competent", "local" and the like, shall not be used to describe the issuers of any document(s) to be presented under a Credit. If such terms are incorporated in the Credit, banks will accept the relative document(s) as presented, provided that it appears on its face to be in compliance with the other terms and conditions of the Credit and not to have been issued by the Beneficiary.
- b Unless otherwise stipulated in the Credit, banks will also accept as an original document(s), a document(s) produced or appearing to have been produced:

- i. by reprographic, automated or computerized systems;
- ii. as carbon copies;

provided that it is marked as original and, where necessary, appears to be signed.

A document may be signed by handwriting, by facsimile signature, by perforated signature, by stamp, by symbol, or by any other mechanical or electronic method of authentication.

- c i. Unless otherwise stipulated in the Credit, banks will accept as a copy(ies), a document(s) either labelled copy or not marked as an original – a copy(ies) need not be signed.
- ii. Credits that require multiple document(s) such as "duplicate", "two fold", "two copies" and the like, will be satisfied by the presentation of one original and the remaining number in copies except where the document itself indicates otherwise.
- d Unless otherwise stipulated in the Credit, a condition under a Credit calling for a document to be authenticated, validated, legalised, visaed, certified or indicating a similar requirement, will be satisfied by any signature, mark, stamp or label on such document that on its face appears to satisfy the above condition.

Article 21

Unspecified Issuers or Contents of Documents

When documents other than transport documents, insurance documents and commercial invoices are called for, the Credit should stipulate by whom such documents are to be issued and their wording or data content. If the Credit does not so stipulate, banks will accept such documents as presented, provided that their data content is not inconsistent with any other stipulated document presented.

Article 22

Issuance Date of Documents v. Credit Date

Unless otherwise stipulated in the Credit, banks will accept a document bearing a date of issuance prior to that of the Credit, subject to such document being presented within the time limits set out in the Credit and in these Articles.

Article 23

Marine/Ocean Bill of Lading

- a If a Credit calls for a bill of lading covering a port-to-port shipment, banks will, unless otherwise stipulated in the Credit, accept a document, however named, which:
 - i. appears on its face to indicate the name of the carrier and to have been signed or otherwise authenticated by:
 - the carrier or a named agent for or on behalf of the carrier, or
 - the master or a named agent for or on behalf of the master.

Any signature or authentication of the carrier or master must be identified as carrier or master, as the case may be. An agent signing or authenticating for the carrier or master must also indicate the name and the capacity of the party, i.e. carrier or master, on whose behalf that agent is acting, and

- ii. indicates that the goods have been loaded on board, or shipped on a named vessel. Loading on board or shipment on a named vessel may be indicated by pre-printed wording on the bill of lading that the goods have been loaded on board a named vessel or shipped on a named vessel, in which case the date of issuance of the bill of lading will be deemed to be the date of loading on board and the date of shipment.

In all other cases loading on board a named vessel must be evidenced by a notation on the bill of lading which gives the date on which the goods have been loaded on board, in which case the date of the on board notation will be deemed to be the date of shipment.

If the bill of lading contains the indication “intended vessel”, or similar qualification in relation to the vessel, loading on board a named vessel must be evidenced by an on board notation on the bill of lading which, in addition to the date on which the goods have been loaded on board, also includes the name of the vessel on which the goods have been loaded, even if they have been loaded on the vessel named as the “intended vessel”.

If the bill of lading indicates a place of receipt or taking in charge different from the port of loading, the on board notation must also include the port of loading stipulated in the Credit and the name of the vessel on which the goods have been loaded, even if they have been loaded on the vessel named in the bill of lading. This provision also applies whenever loading on board the vessel is indicated by pre-printed wording on the bill of lading, and

- iii. indicates the port of loading and the port of discharge stipulated in the Credit, notwithstanding that it:
 - a) indicates a place of taking in charge different from the port of loading, and/or a place of final destination different from the port of discharge, and/or
 - b) contains the indication “intended” or similar qualification in relation to the port of loading and/or port of discharge, as long as the document also states the ports of loading and/or discharge stipulated in the Credit, and
- iv. consists of a sole original bill of lading or, if issued in more than one original, the full set as so issued, and
- v. appears to contain all of the terms and conditions of carriage, or some of such terms and conditions by reference to a source or document other than the bill of lading (short form/blank back bill of lading); banks will not examine the contents of such terms and conditions, and
- vi. contains no indication that it is subject to a charter party and/or no indication that the carrying vessel is propelled by sail only, and
- vii. in all other respects meets the stipulations of the Credit.

b For the purpose of this Article, transshipment means unloading and reloading from one vessel to another vessel during the course of ocean carriage from the port of loading to the port of discharge stipulated in the Credit.

c Unless transshipment is prohibited by the terms of the Credit, banks will accept a bill of lading which indicates that the goods will be transhipped, provided that the entire ocean carriage is covered by one and the same bill of lading.

d Even if the Credit prohibits transshipment, banks will accept a bill of lading which:

- i. indicates that transshipment will take place as long as the relevant cargo is shipped in Container(s), Trailer(s) and/or “LASH” barge(s) as evidenced by the bill of lading, provided that the entire ocean carriage is covered by one and the same bill of lading, and/or
- ii. incorporates clauses stating that the carrier reserves the right to tranship.

Article 24

Non-Negotiable Sea Waybill

a If a Credit calls for a non-negotiable sea waybill covering a port-to-port shipment, banks will, unless otherwise stipulated in the Credit, accept a document, however named, which:

- i. appears on its face to indicate the name of the carrier and to have been signed or otherwise authenticated by:
 - the carrier or a named agent for or on behalf of the carrier, or
 - the master or a named agent for or on behalf of the master, Any signature or authentication of the carrier or master must be identified as carrier or master, as the case may be. An agent signing or authenticating for the carrier or master must also indicate the name and the capacity of the party, i.e. carrier or master, on whose behalf that agent is acting, and
- ii. indicates that the goods have been loaded on board, or shipped on a named vessel.

Loading on board or shipment on a named vessel may be indicated by pre-printed wording on the non-negotiable sea waybill that the goods have been loaded on board a named vessel or shipped on a named vessel, in which case the date of issuance of the non-negotiable sea way bill will be deemed to be the date of loading on board and the date of shipment.

In all other cases loading on board a named vessel must be evidenced by a notation on the non-negotiable sea waybill which gives the date on which the goods have been loaded on board, in which case the date of the on board notation will be deemed to be the date of shipment.

If the non-negotiable sea waybill contains the indication “intended vessel”, or similar qualification in relation to the vessel, loading on board a named vessel must be evidenced by an on board notation on the non-negotiable sea waybill which, in addition to the date on which the goods have been loaded on board, includes the name of the vessel on which the goods have been loaded, even if they have been loaded on the vessel named as the “intended vessel”.

If the non-negotiable sea waybill indicates a place of receipt or taking in charge different from the port of loading, the on board notation must also include the port

of loading stipulated in the Credit and the name of the vessel on which the goods have been loaded, even if they have been loaded on a vessel named in the non-negotiable sea waybill. This provision also applies whenever loading on board the vessel is indicated by pre-printed wording on the non-negotiable sea waybill,

and

- iii. indicates the port of loading and the port of discharge stipulated in the Credit, notwithstanding that it:
 - a) indicates a place of taking in charge different from the port of loading, and/or a place of final destination different from the port of discharge,
 - and/or
 - b) contains the indication “intended” or similar qualification in relation to the port of loading and/or port of discharge, as long as the document also states the ports of loading and/or discharge stipulated in the Credit,
 - and
 - iv. consists of a sole original non-negotiable sea waybill, or if issued in more than one original, the full set as so issued,
 - and
 - v. appears to contain all of the terms and conditions of carriage, or some of such terms and conditions by reference to a source or document other than the non-negotiable sea waybill (short form/blank back non-negotiable sea waybill); banks will not examine the contents of such terms and conditions,
 - and
 - vi. contains no indication that it is subject to a charter party and/or no indication that the carrying vessel is propelled by sail only,
 - and
 - vii. in all other respects meets the stipulations of the Credit.
- b For the purpose of this Article, transshipment means unloading and reloading from one vessel to another vessel during the course of ocean carriage from the port of loading to the port of discharge stipulated in the Credit.
- c Unless transshipment is prohibited by the terms of the Credit, banks will accept a non-negotiable sea waybill which indicates that the goods will be transhipped, provided that the entire ocean carriage is covered by one and the same non-negotiable sea waybill.
- d Even if the Credit prohibits transshipment, banks will accept a nonnegotiable sea waybill which:
- i. indicates that transshipment will take place as long as the relevant cargo is shipped in Container(s), Trailer(s) and/or “LASH” barge(s) as evidenced by the non-negotiable sea waybill, provided that the entire ocean carriage is covered by one and the same non-negotiable sea waybill, and/or
 - ii. incorporates clauses stating that the carrier reserves the right to tranship.

Article 25

Charter Party Bill of Lading

a If a Credit calls for or permits a charter party bill of lading, banks will, unless otherwise stipulated in the Credit, accept a document, however named, which:

- i. contains any indication that it is subject to a charter party,
 - and
 - ii. appears on its face to have been signed or otherwise authenticated by:
 - the master or a named agent for or on behalf of the master, or
 - the owner or a named agent for or on behalf of the owner.
- Any signature or authentication of the master or owner must be identified as master or owner as the case may be. An agent signing or authenticating for the master or owner must also indicate the name and the capacity of the party, i.e. master or owner, on whose behalf that agent is acting,
- and
- iii. does or does not indicate the name of the carrier,
 - and
 - iv. indicates that the goods have been loaded on board or shipped on a named vessel.

Loading on board or shipment on a named vessel may be indicated by pre-printed wording on the bill of lading that the goods have been loaded on board a named vessel or shipped on a named vessel, in which case the date of issuance of the bill of lading will be deemed to be the date of loading on board and the date of shipment.

In all other cases loading on board a named vessel must be evidenced by a notation on the bill of lading which gives the date on which the goods have been loaded on board, in which case the date of the on board notation will be deemed to be the date of shipment,

and

- v. indicates the port of loading and the port of discharge stipulated in the Credit,
 - and
 - vi. consists of a sole original bill of lading or, if issued in more than one original, the full set as so issued,
 - and
 - vii. contains no indication that the carrying vessel is propelled by sail only,
 - and
 - viii. in all other respects meets the stipulations of the Credit.
- b Even if the Credit requires the presentation of a charter party contract in connection with a charter party bill of lading, banks will not examine such charter party contract, but will pass it on without responsibility on their part.

Article 26

Multimodal Transport Document

a If a Credit calls for a transport document covering at least two different modes of transport (multimodal transport), banks will, unless otherwise stipulated in the Credit, accept a document, however named, which:

- i. appears on its face to indicate the name of the carrier or multimodal transport operator and to have been signed or otherwise authenticated by:
 - the carrier or multimodal transport operator or a named agent for or on behalf of the carrier or multimodal transport operator,
 - or
 - the master or a named agent for or on behalf of the master.

Any signature or authentication of the carrier, multimodal transport operator or master must be identified as carrier, multimodal transport operator or master, as the case may be. An agent signing or authenticating for the carrier, multimodal transport operator or master must also indicate the name and the capacity of the party, i.e. carrier, multimodal transport operator or master, on whose behalf that agent is acting,

and

- ii. indicates that the goods have been dispatched, taken in charge or loaded on board.

Dispatch, taking in charge or loading on board may be indicated by wording to that effect on the multimodal transport document and the date of issuance will be deemed to be the date of dispatch, taking in charge or loading on board and the date of shipment. However, if the document indicates, by stamp or otherwise, a date of dispatch, taking in charge or loading on board, such date will be deemed to be the date of shipment,

and

- iii. a) indicates the place of taking in charge stipulated in the Credit which may be different from the port, airport or place of loading, and the place of final destination stipulated in the Credit which may be different from the port, airport or place of discharge,
- and/or

b) contains the indication “intended” or similar qualification in relation to the vessel and/or port of loading and/or port of discharge,

and

- iv. consists of a sole original multimodal transport document or, if issued in more than one original, the full set as so issued,

and

- v. appears to contain all of the terms and conditions of carriage, or some of such terms and conditions by reference to a source or document other than the multimodal transport document (short form/blank back multimodal transport document); banks will not examine the contents of such terms and conditions,
- and

- vi. contains no indication that it is subject to a charter party and/or no indication that the carrying vessel is propelled by sail only,

and

- vii. in all other respects meets the stipulations of the Credit.
- b Even if the Credit prohibits transshipment, banks will accept a multimodal transport document which indicates that transshipment will or may take place, provided that the entire carriage is covered by one and the same multimodal transport document.

Article 27

Air Transport Document

a If a Credit calls for an air transport document, banks will, unless otherwise stipulated in the Credit, accept a document, however named, which:

- i. appears on its face to indicate the name of the carrier and to have been signed or otherwise authenticated by:
 - the carrier, or
 - a named agent for or on behalf of the carrier.

Any signature or authentication of the carrier must be identified as carrier. An agent signing or authenticating for the carrier must also indicate the name and the capacity of the party, i.e. carrier, on whose behalf that agent is acting,

and

- ii. indicates that the goods have been accepted for carriage,
- and

- iii. where the Credit calls for an actual date of dispatch, indicates a specific notation of such date, the date of dispatch so indicated on the air transport document will be deemed to be the date of shipment.

For the purpose of this Article, the information appearing in the box on the air transport document (marked “For Carrier Use Only” or similar expression) relative to the flight number and date will not be considered as a specific notation of such date of dispatch.

In all other cases, the date of issuance of the air transport document will be deemed to be the date of shipment,

and

- iv. indicates the airport of departure and the airport of destination stipulated in the Credit,

and

- v. appears to be the original for consignor/shipper even if the Credit stipulates a full set of originals, or similar expressions,

and

- vi. appears to contain all of the terms and conditions of carriage, or some of such terms and conditions, by reference to a source or document other than the air transport document; banks will not examine the contents of such terms and conditions,

and

- vii. in all other respects meets the stipulations of the Credit.

- b For the purpose of this Article, transshipment means unloading and reloading from one aircraft to another aircraft during the course of carriage from the airport of departure to the airport of destination stipulated in the Credit.
- c Even if the Credit prohibits transshipment, banks will accept an air transport document which indicates that transshipment will or may take place, provided that the entire carriage is covered by one and the same air transport document.

Article 28

Road, Rail or Inland Waterway Transport Documents

- a If a Credit calls for a road, rail, or inland waterway transport document, banks will, unless otherwise stipulated in the Credit, accept a document of the type called for, however named, which:

- i. appears on its face to indicate the name of the carrier and to have been signed or otherwise authenticated by the carrier or a named agent for or on behalf of the carrier and/or to bear a reception stamp or other indication of receipt by the carrier or a named agent for or on behalf of the carrier.

Any signature, authentication, reception stamp or other indication of receipt of the carrier, must be identified on its face as that of the carrier. An agent signing or authenticating for the carrier, must also indicate the name and the capacity of the party, i.e. carrier, on whose behalf that agent is acting,

and

- ii. indicates that the goods have been received for shipment, dispatch or carriage or wording to this effect. The date of issuance will be deemed to be the date of shipment unless the transport document contains a reception stamp, in which case the date of the reception stamp will be deemed to be the date of shipment,
- and
- iii. indicates the place of shipment and the place of destination stipulated in the Credit,
- and
- iv. in all other respects meets the stipulations of the Credit.

- b In the absence of any indication on the transport document as to the numbers issued, banks will accept the transport document(s) presented as constituting a full set. Banks will accept as original(s) the transport document(s) whether marked as original(s) or not.

- c For the purpose of this Article, transshipment means unloading and reloading from one means of conveyance to another means of conveyance, in different modes of transport, during the course of carriage from the place of shipment to the place of destination stipulated in the Credit.
- d Even if the Credit prohibits transshipment, banks will accept a road, rail, or inland waterway transport document which indicates that transshipment will or may take place, provided that the entire carriage is covered by one and the same transport document and within the same mode of transport.

Article 29

Courier and Post Receipts

- a If a Credit calls for a post receipt or certificate of posting, banks will, unless otherwise stipulated in the Credit, accept a post receipt or certificate of posting which:

- i. appears on its face to have been stamped or otherwise authenticated and dated in the place from which the Credit stipulates the goods are to be shipped or dispatched and such date will be deemed to be the date of shipment or dispatch,
- and
- ii. in all other respects meets the stipulations of the Credit.

- b If a Credit calls for a document issued by a courier or expedited delivery service evidencing receipt of the goods for delivery, banks will, unless otherwise stipulated in the Credit, accept a document, however named, which:

- i. appears on its face to indicate the name of the courier/service, and to have been stamped, signed or otherwise authenticated by such named courier/service (unless the Credit specifically calls for a document issued by a named Courier/Service, banks will accept a document issued by any Courier/Service),

and

- ii. indicates a date of pick-up or of receipt or wording to this effect, such date being deemed to be the date of shipment or dispatch,

and

- iii. in all other respects meets the stipulations of the Credit.

Article 30

Transport Documents issued by Freight Forwarders

Unless otherwise authorised in the Credit, banks will only accept a transport document issued by a freight forwarder if it appears on its face to indicate:

- i. the name of the freight forwarder as a carrier or multimodal transport operator and to have been signed or otherwise authenticated by the freight forwarder as carrier or multimodal transport operator,
- or
- ii. the name of the carrier or multimodal transport operator and to have been signed or otherwise authenticated by the freight forwarder as a named agent for or on behalf of the carrier or multimodal transport operator.

Article 31

“On Deck”, “Shipper’s Load and Count”, Name of Consignor

Unless otherwise stipulated in the Credit, banks will accept a transport document which:

- i. does not indicate, in the case of carriage by sea or by more than one means of conveyance including carriage by sea, that the goods are or will be loaded on deck. Nevertheless, banks will accept a transport document which contains a provision that the goods may be carried on deck, provided that it does not specifically state that they are or will be loaded on deck,
- and/or

- ii. bears a clause on the face thereof such as “shipper’s load and count” or “said by shipper to contain” or words of similar effect, and/or
- iii. indicates as the consignor of the goods a party other than the Beneficiary of the Credit.

Article 32

Clean Transport Documents

- a A clean transport document is one which bears no clause or notation which expressly declares a defective condition of the goods and/or the packaging.
- b Banks will not accept transport documents bearing such clauses or notations unless the Credit expressly stipulates the clauses or notations which may be accepted.
- c Banks will regard a requirement in a Credit for a transport document to bear the clause “clean on board” as complied with if such transport document meets the requirements of this Article and of Articles 23, 24, 25, 26, 27, 28 or 30.

Article 33

Freight Payable/Prepaid Transport Documents

- a Unless otherwise stipulated in the Credit, or inconsistent with any of the documents presented under the Credit, banks will accept transport documents stating that freight or transportation charges (hereafter referred to as “freight”) have still to be paid.
- b If a Credit stipulates that the transport document has to indicate that freight has been paid or prepaid, banks will accept a transport document on which words clearly indicating payment or prepayment of freight appear by stamp or otherwise, or on which payment or prepayment of freight is indicated by other means. If the Credit requires courier charges to be paid or prepaid banks will also accept a transport document issued by a courier or expedited delivery service evidencing that courier charges are for the account of a party other than the consignee.
- c The words “freight prepayable” or “freight to be prepaid” or words of similar effect, if appearing on transport documents, will not be accepted as constituting evidence of the payment of freight.
- d Banks will accept transport documents bearing reference by stamp or otherwise to costs additional to the freight, such as costs of, or disbursements incurred in connection with, loading, unloading or similar operations, unless the conditions of the Credit specifically prohibit such reference.

Article 34

Insurance Documents

- a Insurance documents must appear on their face to be issued and signed by insurance companies or underwriters or their agents.
- b If the insurance document indicates that it has been issued in more than one original, all the originals must be presented unless otherwise authorised in the Credit.
- c Cover notes issued by brokers will not be accepted, unless specifically authorised in the Credit.

- d Unless otherwise stipulated in the Credit, banks will accept an insurance certificate or a declaration under an open cover presigned by insurance companies or underwriters or their agents. If a Credit specifically calls for an insurance certificate or a declaration under an open cover, banks will accept, in lieu thereof, an insurance policy.
- e Unless otherwise stipulated in the Credit, or unless it appears from the insurance document that the cover is effective at the latest from the date of loading on board or dispatch or taking in charge of the goods, banks will not accept an insurance document which bears a date of issuance later than the date of loading on board or dispatch or taking in charge as indicated in such transport document.
- f i. Unless otherwise stipulated in the Credit, the insurance document must be expressed in the same currency as the Credit.
- ii. Unless otherwise stipulated in the Credit, the minimum amount for which the insurance document must indicate the insurance cover to have been effected is the CIF (cost, insurance and freight (... “named port of destination”)) or CIP (carriage and insurance paid to (... “named place of destination”)) value of the goods, as the case may be, plus 10%, but only when the CIF or CIP value can be determined from the documents on their face. Otherwise, banks will accept as such minimum amount 110% of the amount for which payment, acceptance or negotiation is requested under the Credit, or 110% of the gross amount of the invoice, whichever is the greater.

Article 35

Type of Insurance Cover

- a Credits should stipulate the type of insurance required and, if any, the additional risks which are to be covered. Imprecise terms such as “usual risks” or “customary risks” shall not be used; if they are used, banks will accept insurance documents as presented, without responsibility for any risks not being covered.
- b Failing specific stipulations in the Credit, banks will accept insurance documents as presented, without responsibility for any risks not being covered.
- c Unless otherwise stipulated in the Credit, banks will accept an insurance document which indicates that the cover is subject to a franchise or an excess (deductible).

Article 36

All Risks Insurance Cover

Where a Credit stipulates “insurance against all risks”, banks will accept an insurance document which contains any “all risks” notation or clause, whether or not bearing the heading “all risks”, even if the insurance document indicates that certain risks are excluded, without responsibility for any risk(s) not being covered.

Article 37

Commercial Invoices

- a Unless otherwise stipulated in the Credit, commercial invoices;
 - i. must appear on their face to be issued by the Beneficiary named in the Credit (except as provided in Article 48),

- and
 - ii. must be made out in the name of the Applicant (except as provided in sub-Article 48 (h)),
 - and
 - iii. need not be signed.
- b Unless otherwise stipulated in the Credit, banks may refuse commercial invoices issued for amounts in excess of the amount permitted by the Credit. Nevertheless, if a bank authorised to pay, incur a deferred payment undertaking, accept Draft(s), or negotiate under a Credit accepts such invoices, its decision will be binding upon all parties, provided that such bank has not paid, incurred a deferred payment undertaking, accepted Draft(s) or negotiated for an amount in excess of that permitted by the Credit.
- c The description of the goods in the commercial invoice must correspond with the description in the Credit. In all other documents, the goods may be described in general terms not inconsistent with the description of the goods in the Credit.

Article 38

Other Documents

If a Credit calls for an attestation or certification of weight in the case of transport other than by sea, banks will accept a weight stamp or declaration of weight which appears to have been superimposed on the transport document by the carrier or his agent unless the Credit specifically stipulates that the attestation or certification of weight must be by means of a separate document.

E. MISCELLANEOUS PROVISIONS

Article 39

Allowances in Credit Amount, Quantity and Unit Price

- a The words “about”, “approximately”, “circa” or similar expressions used in connection with the amount of the Credit or the quantity or the unit price stated in the Credit are to be construed as allowing a difference not to exceed 10% more or 10% less than the amount or the quantity or the unit price to which they refer.
- b Unless a Credit stipulates that the quantity of the goods specified must not be exceeded or reduced, a tolerance of 5% more or 5% less will be permissible, always provided that the amount of the drawings does not exceed the amount of the Credit. This tolerance does not apply when the Credit stipulates the quantity in terms of a stated number of packing units or individual items.
- c Unless a Credit which prohibits partial shipments stipulates otherwise, or unless sub-Article (b) above is applicable, a tolerance of 5% less in the amount of the drawing will be permissible, provided that if the Credit stipulates the quantity of the goods, such quantity of goods is shipped in full, and if the Credit stipulates a unit price, such price is not reduced. This provision does not apply when expressions referred to in sub-Article (a) above are used in the Credit.

Article 40

Partial Shipments/Drawings

- a Partial drawings and/or shipments are allowed, unless the Credit stipulates otherwise.

- b Transport documents which appear on their face to indicate that shipment has been made on the same means of conveyance and for the same journey, provided they indicate the same destination, will not be regarded as covering partial shipments, even if the transport documents indicate different dates of shipment and/or different ports of loading, places of taking in charge, or despatch.
- c Shipments made by post or by courier will not be regarded as partial shipments if the post receipts or certificates of posting or courier's receipts or dispatch notes appear to have been stamped, signed or otherwise authenticated in the place from which the Credit stipulates the goods are to be dispatched, and on the same date.

Article 41

Instalment Shipments/Drawings

If drawings and/or shipments by instalments within given periods are stipulated in the Credit and any instalment is not drawn and/or shipped within the period allowed for that instalment, the Credit ceases to be available for that and any subsequent instalments, unless otherwise stipulated in the Credit.

Article 42

Expiry Date and Place for Presentation of Documents

- a All Credits must stipulate an expiry date and a place for presentation of documents for payment, acceptance, or with the exception of freely negotiable Credits, a place for presentation of documents for negotiation. An expiry date stipulated for payment, acceptance or negotiation will be construed to express an expiry date for presentation of documents.
- b Except as provided in sub-Article 44(a), documents must be presented on or before such expiry date.
- c If an Issuing Bank states that the Credit is to be available “for one month”, “for six months”, or the like, but does not specify the date from which the time is to run, the date of issuance of the Credit by the Issuing Bank will be deemed to be the first day from which such time is to run. Banks should discourage indication of the expiry date of the Credit in this manner.

Article 43

Limitation on the Expiry Date

- a In addition to stipulating an expiry date for presentation of documents, every Credit which calls for a transport document(s) should also stipulate a specified period of time after the date of shipment during which presentation must be made in compliance with the terms and conditions of the Credit. If no such period of time is stipulated, banks will not accept documents presented to them later than 21 days after the date of shipment. In any event, documents must be presented not later than the expiry date of the Credit.
- b In cases in which sub-Article 40(b) applies, the date of shipment will be considered to be the latest shipment date on any of the transport documents presented.

Article 44

Extension of Expiry Date

- a If the expiry date of the Credit and/or the last day of the period of time for presentation of documents stipulated by the Credit or applicable by virtue of Article 43 falls on a day on which the bank to which presentation has to be made is closed for reasons other than those referred to in Article 17, the stipulated expiry date and/or the last day of the period of time after the date of shipment for presentation of documents, as the case may be, shall be extended to the first following day on which such bank is open.
- b The latest date for shipment shall not be extended by reason of the extension of the expiry date and/or the period of time after the date of shipment for presentation of documents in accordance with sub-Article (a) above. If no such latest date for shipment is stipulated in the Credit or amendments thereto, banks will not accept transport documents indicating a date of shipment later than the expiry date stipulated in the Credit or amendments thereto.
- c The bank to which presentation is made on such first following business day must provide a statement that the documents were presented within the time limits extended in accordance with sub-Article 44(a) of the Uniform Customs and Practice for Documentary Credits, 1993 Revision, ICC Publication No. 500.

Article 45

Hours of Presentation

Banks are under no obligation to accept presentation of documents outside their banking hours.

Article 46

General Expressions as to Dates for Shipment

- a Unless otherwise stipulated in the Credit, the expression “shipment” used in stipulating an earliest and/or a latest date for shipment will be understood to include expressions such as, “loading on board”, “dispatch”, “accepted for carriage”, “date of post receipt”, “date of pick-up”, and the like, and in the case of a Credit calling for a multimodal transport document the expression “taking in charge”.
- b Expressions such as “prompt”, “immediately”, “as soon as possible”, and the like should not be used. If they are used banks will disregard them.
- c If the expression “on or about” or similar expressions are used, banks will interpret them as a stipulation that shipment is to be made during the period from five days before to five days after the specified date, both end days included.

Article 47

Date Terminology for Periods of Shipment

- a The words “to”, “until”, “till”, “from” and words of similar import applying to any date or period in the Credit referring to shipment will be understood to include the date mentioned.
- b The word “after” will be understood to exclude the date mentioned.
- c The terms “first half”, “second half” of a month shall be construed respectively as the 1st to the 15th, and the 16th to the last day of such month, all dates inclusive.

- d The terms “beginning”, “middle”, or “end” of a month shall be construed respectively as the 1st to the 10th, the 11th to the 20th, and the 21st to the last day of such month, all dates inclusive.

F. TRANSFERABLE CREDIT

Article 48

Transferable Credit

- a A transferable Credit is a Credit under which the Beneficiary (First Beneficiary) may request the bank authorised to pay, incur a deferred payment undertaking, accept or negotiate (the “Transferring Bank”), or in the case of a freely negotiable Credit, the bank specifically authorised in the Credit as a Transferring Bank, to make the Credit available in whole or in part to one or more other Beneficiary(ies) (Second Beneficiary(ies)).
 - b A Credit can be transferred only if it is expressly designated as “transferable” by the Issuing Bank. Terms such as “divisible”, “fractionable”, “assignable”, and “transmissible” do not render the Credit transferable. If such terms are used they shall be disregarded.
 - c The Transferring Bank shall be under no obligation to effect such transfer except to the extent and in the manner expressly consented to by such bank.
 - d At the time of making a request for transfer and prior to transfer of the Credit, the First Beneficiary must irrevocably instruct the Transferring Bank whether or not he retains the right to refuse to allow the Transferring Bank to advise amendments to the Second Beneficiary(ies). If the Transferring Bank consents to the transfer under these conditions, it must, at the time of transfer, advise the Second Beneficiary(ies) of the First Beneficiary’s instructions regarding amendments.
 - e If a Credit is transferred to more than one Second Beneficiary(ies), refusal of an amendment by one or more Second Beneficiary(ies) does not invalidate the acceptance(s) by the other Second Beneficiary(ies) with respect to whom the Credit will be amended accordingly. With respect to the Second Beneficiary(ies) who rejected the amendment, the Credit will remain unamended.
 - f Transferring Bank charges in respect of transfers including commissions, fees, costs or expenses are payable by the First Beneficiary, unless otherwise agreed. If the Transferring Bank agrees to transfer the Credit it shall be under no obligation to effect the transfer until such charges are paid.
 - g Unless otherwise stated in the Credit, a transferable Credit can be transferred once only. Consequently, the Credit cannot be transferred at the request of the Second Beneficiary to any subsequent Third Beneficiary. For the purpose of this Article, a retransfer to the First Beneficiary does not constitute a prohibited transfer.
- Fractions of a transferable Credit (not exceeding in the aggregate the amount of the Credit) can be transferred separately, provided partial shipments/drawings are not prohibited, and the aggregate of such transfers will be considered as constituting only one transfer of the Credit.
- h The Credit can be transferred only on the terms and conditions specified in the original Credit, with the exception of:
 - the amount of the Credit,

- any unit price stated therein,
 - the expiry date,
 - the last date for presentation of documents in accordance with Article 43,
 - the period for shipment,
- any or all of which may be reduced or curtailed.

The percentage for which insurance cover must be effected may be increased in such a way as to provide the amount of cover stipulated in the original Credit, or these Articles.

In addition, the name of the First Beneficiary can be substituted for that of the Applicant, but if the name of the Applicant is specifically required by the original Credit to appear in any document(s) other than the invoice, such requirement must be fulfilled.

- i The First Beneficiary has the right to substitute his own invoice(s) (and Draft(s)) for those of the Second Beneficiary(ies), for amounts not in excess of the original amount stipulated in the Credit and for the original unit prices if stipulated in the Credit, and upon such substitution of invoice(s) (and Draft(s)) the First Beneficiary can draw under the Credit for the difference, if any, between his invoice(s) and the Second Beneficiary's(ies') invoice(s).

When a Credit has been transferred and the First Beneficiary is to supply his own invoice(s) (and Draft(s)) in exchange for the Second Beneficiary's(ies') invoice(s) (and Draft(s)) but fails to do so on first demand, the Transferring Bank has the right to deliver to the Issuing Bank the documents received under the transferred Credit, including the Second Beneficiary's(ies') invoice(s) (and Draft(s)) without further responsibility to the First Beneficiary.

- j The First Beneficiary may request that payment or negotiation be effected to the Second Beneficiary(ies) at the place to which the Credit has been transferred up to and including the expiry date of the Credit, unless the original Credit expressly states that it may not be made available for payment or negotiation at a place other than that stipulated in the Credit. This is without prejudice to the First Beneficiary's right to substitute subsequently his own invoice(s) (and Draft(s)) for those of the Second Beneficiary(ies) and to claim any difference due to him.

G. ASSIGNMENT OF PROCEEDS

Article 49

Assignment of Proceeds

The fact that a Credit is not stated to be transferable shall not affect the Beneficiary's right to assign any proceeds to which he may be, or may become, entitled under such Credit, in accordance with the provisions of the applicable law. This Article relates only to the assignment of proceeds and not to the assignment of the right to perform under the Credit itself.

SUPPLEMENT TO UCP 500 FOR ELECTRONIC PRESENTATION – VERSION 1.0

Article e1

Scope of the eUCP

- a The Supplement to the Uniform Customs and Practice for Documentary Credits for Electronic Presentation ("eUCP") supplements the Uniform Customs and Practice for Documentary Credits (1993 Revision ICC Publication No. 500,) ("UCP") in order to accommodate presentation of electronic records alone or in combination with paper documents.
- b The eUCP shall apply as a supplement to the UCP where the Credit indicates that it is subject to eUCP.
- c This version is Version 1.0. A Credit must indicate the applicable version of the eUCP. If it does not do so, it is subject to the version in effect on the date the Credit is issued or, if made subject to eUCP by an amendment accepted by the Beneficiary, on the date of that amendment.

Article e2

Relationship of the eUCP to the UCP

- a A Credit subject to the eUCP ("eUCP Credit") is also subject to the UCP without express incorporation of the UCP.
- b Where the eUCP applies, its provisions shall prevail to the extent that they would produce a result different from the application of the UCP.
- c If an eUCP Credit allows the Beneficiary to choose between presentation of paper documents or electronic records and it chooses to present only paper documents, the UCP alone shall apply to that presentation. If only paper documents are permitted under an eUCP Credit, the UCP alone shall apply.

Article e3

Definitions

- a Where the following terms are used in the UCP, for the purposes of applying the UCP to an electronic record presented under an eUCP Credit, the term:
 - i. "appears on its face" and the like shall apply to examination of the data content of an electronic record.
 - ii. "document" shall include an electronic record.
 - iii. "place for presentation" of electronic records means an electronic address.
 - iv. "sign" and the like shall include an electronic signature.
 - v. "superimposed", "notation" or "stamped" means data content whose supplementary character is apparent in an electronic record.
- b The following terms used in the eUCP shall have the following meanings:
 - i. "electronic record" means
 - data created, generated, sent, communicated, received, or stored by electronic means
 - that is capable of being authenticated as to the apparent identity of a sender and the apparent source of the data contained in it, and as to whether it has remained complete and unaltered, and

- is capable of being examined for compliance with the terms and conditions of the eUCP Credit.
- ii. “electronic signature” means a data process attached to or logically associated with an electronic record and executed or adopted by a person in order to identify that person and to indicate that person’s authentication of the electronic record.
- iii. “format” means the data organisation in which the electronic record is expressed or to which it refers.
- iv. “paper document” means a document in a traditional paper form.
- v. “received” means the time when an electronic record enters the information system of the applicable recipient in a form capable of being accepted by that system. Any Supplement to UCP 500 for Electronic Presentation acknowledgement of receipt does not imply acceptance or refusal of the electronic record under an eUCP Credit.

Article e4

Format

An eUCP Credit must specify the formats in which electronic records are to be presented. If the format of the electronic record is not so specified, it may be presented in any format.

Article e5

Presentation

- a An eUCP Credit allowing presentation of:
 - i. electronic records must state a place for presentation of the electronic records.
 - ii. both electronic records and paper documents must also state a place for presentation of the paper documents.
- b Electronic records may be presented separately and need not be presented at the same time.
- c If an eUCP Credit allows for presentation of one or more electronic records, the Beneficiary is responsible for providing a notice to the Bank to which presentation is made signifying when the presentation is complete. The notice of completeness may be given as an electronic record or paper document and must identify the eUCP Credit to which it relates. Presentation is deemed not to have been made if the Beneficiary’s notice is not received.
- d i. Each presentation of an electronic record and the presentation of paper documents under an eUCP Credit must identify the eUCP Credit under which it is presented.
 - ii. A presentation not so identified may be treated as not received.
- e If the Bank to which presentation is to be made is open but its system is unable to receive a transmitted electronic record on the stipulated expiry date and/or the last day of the period of time after the date of shipment for presentation, as the case may be, the Bank will be deemed to be closed and the date for presentation and/or the expiry date shall be extended to the first following banking day on which such Bank is able to receive an electronic record. If the only electronic record remaining to be presented is the notice of completeness, it may be given by telecommunications or by

- paper document and will be deemed timely, provided that it is sent before the bank is able to receive an electronic record.
- f An electronic record that cannot be authenticated is deemed not to have been presented.

Article e6

Examination

- a If an electronic record contains a hyperlink to an external system or a presentation indicates that the electronic record may be examined by reference to an external system, the electronic record at the hyperlink or the referenced system shall be deemed to be the electronic record to be examined. The failure of the indicated system to provide access to the required electronic record at the time of examination shall constitute a discrepancy.
- b The forwarding of electronic records by a Nominated Bank pursuant to its nomination signifies that it has checked the apparent authenticity of the electronic records.
- c The inability of the Issuing Bank, or Confirming Bank, if any, to examine an electronic record in a format required by the eUCP Credit or, if no format is required, to examine it in the format presented is not a basis for refusal.

Article e7

Notice of Refusal

- a i. The time period for the examination of documents commences on the banking day following the banking day on which the Beneficiary’s notice of completeness is received.
- ii. If the time for presentation of documents or the notice of completeness is extended, the time for the examination of documents commences on the first following banking day on which the bank to which presentation is to be made is able to receive the notice of completeness.
- b If an Issuing Bank, the Confirming Bank, if any, or a Nominated Bank acting on their behalf, provides a notice of refusal of a presentation which includes electronic records and does not receive instructions from the party to which notice of refusal is given within 30 calendar days from the date the notice of refusal is given for the disposition of the electronic records, the Bank shall return any paper documents not previously returned to the presenter but may dispose of the electronic records in any manner deemed appropriate without any responsibility.

Article e8

Originals and Copies

Any requirement of the UCP or an eUCP Credit for presentation of one or more originals or copies of an electronic record is satisfied by the presentation of one electronic record.

Article e9

Date of Issuance

Unless an electronic record contains a specific date of issuance, the date on which it appears to have been sent by the issuer is deemed to be the date of issuance. The date of receipt will be deemed to be the date it was sent if no other date is apparent.

Article e10

Transport

If an electronic record evidencing transport does not indicate a date of shipment or dispatch, the date of issuance of the electronic record will be deemed to be the date of shipment or dispatch. However, if the electronic record bears a notation that evidences the date of shipment or dispatch, the date of the notation will be deemed to be the date of shipment or dispatch. A notation showing additional data content need not be separately signed or otherwise authenticated.

Article e11

Corruption of an Electronic Record after Presentation

- a If an electronic record that has been received by the Issuing Bank, Confirming Bank, or another Nominated Bank appears to have been corrupted, the Bank may inform the presenter and may request that the electronic record be re-presented.
- b If the Bank requests that an electronic record be re-presented:
 - i. the time for examination is suspended and resumes when the presenter re-presents the electronic record; and
 - ii. if the Nominated Bank is not the Confirming Bank, it must provide the Issuing Bank and any Confirming Bank with notice of the request for re-presentation and inform it of the suspension; but
 - iii. if the same electronic record is not re-presented within thirty (30) calendar days, the Bank may treat the electronic record as not presented, and
 - iv. any deadlines are not extended.

Article e12

Additional Disclaimer of Liability for Presentation of Electronic Records under eUCP

By checking the apparent authenticity of an electronic record, Banks assume no liability for the identity of the sender, source of the information, or its complete and unaltered character other than that which is apparent in the electronic record received by the use of a commercially acceptable data process for the receipt, authentication, and identification of electronic records.

ICC Banking Commission Decisions & Policy Statements

THE DETERMINATION OF AN “ORIGINAL” DOCUMENT IN THE CONTEXT OF UCP 500 SUB-ARTICLE 20(b)

Commission on Banking Technique and Practice, 12 July 1999
Original documents

This Decision emphasizes the need to correctly interpret and apply sub-Article 20(b) of UCP 500. Consequently, ICC national committees and associated organizations are strongly urged to distribute this Decision as widely as possible to help ensure the correct interpretation in the evaluation of documents issued under letters of credit. This Decision does not amend sub-Article 20(b) of UCP 500 in any way, but merely indicates the correct interpretation thereof which has been adopted unanimously by the ICC Commission on Banking Technique and Practice on 12 July 1999.

1. Background

Over a period of several years there have been a number of queries raised with the ICC Banking Commission as to the determination, by banks, of what is an “original” document under a letter of credit and the necessity, if any, for such a document to be so marked.

For ease of reference the text of sub-Article 20(b) reads:

“Unless otherwise stipulated in the Credit, banks will also accept as an original document(s), a document(s) produced or appearing to have been produced

- by reprographic, automated or computerized systems
- as carbon copies;

provided that it is marked as original and, where necessary, appears to be signed.

A document may be signed by handwriting, by facsimile signature, by perforated signature, by stamp, by symbol, or by any other mechanical or electronic method of authentication.”

2. Determination of originality

In documentary credit operations, the document checker is faced with a number of issues pertaining to originality including:

Apparent originality

Banks undertake to determine whether a document appears on its face to be an original document, as distinguished from a copy. Except as expressly required by a letter of credit including an incorporated term – such as UCP 500 sub-Articles 23(a)(iv) or 34(b) – banks do not undertake to determine whether an apparent original is the sole original. Banks rely on the apparent intent of the issuer of the document that it be treated as an original rather than a copy.

In this regard, a person sending a telefax or making a photocopy on plain paper or pressing through carbon paper presumably intends to produce a copy. On the other hand, a person printing a document on plain paper from a text that that person created and electronically stored presumably intends to produce an original. Accordingly, documents bearing facsimile signatures or printed in their entirety (even including the issuer’s letterhead and/or signature) from electronically stored text are presumably intended by the document issuer to be original and in practice are accepted by banks as original.

Documents that appear to be original but are not

Banks do not undertake to determine whether a document is original in fact. Under UCP 500 Article 15, banks are not responsible for the genuineness or falsification of any document. If a document appears to be original or to have been marked as original but is in fact not original, then its presentation may give rise to exceptional defences, rights, or obligations under the law applicable to forged or fraudulent presentations and is beyond the scope of UCP 500.

UCP 500 requirements

The UCP neither requires nor permits an examination beyond the face of a document to determine how the document was in fact produced, unless the document was produced by the bank, e.g. on a telefax, telex, e-mail, or other system that prints out messages received by the bank. The “produced or appearing to have been produced” language in sub-Article 20(b) does not override UCP 500 sub-Articles 13(a), 13(c),

or 14(b), or other practice and law that prohibit issuers and confirmers from determining compliance on the basis of extrinsic facts.

As indicated by inclusion of the word “also” (“... banks will also accept as original(s) ...”), sub-Article 20(b) is neither comprehensive nor exclusive in its provisions that distinguish originals from copies. For example, a document printed on plain paper from electronically stored text is acceptable, without regard to 20(b), if it appears to be an original.

Sub-Article 20(b) does not apply to documents that appear to be only partially produced by reprographic, automated, or computerized systems or as carbon copies. In this regard, a photocopy ceases to be “reprographically produced” within the meaning of sub-Article 20(b) when it is also manually stamped, dated, completed, or signed by the issuer of the document.

The “marked as original” proviso in sub-Article 20(b) is satisfied by any marking on a document or any recital in the text of a document that indicates that the issuer of the document intends it to be treated as an original rather than a copy. Accordingly, a document that appears to have been printed on plain paper from electronically stored text is “marked as original” under sub-Article 20(b) if it also states that it is original or includes letterhead or is hand marked.

Sub-Article 13(a) of UCP 500 refers to compliance of the presented documents being determined by international standard banking practice as defined in the articles of UCP. International standard banking practice in relation to determination of “original” documents could be described as follows:

3. Correct interpretation of sub-Article 20(b)

General approach

Banks examine documents presented under a letter of credit to determine, among other things, whether on their face they appear to be original. Banks treat as original any document bearing an apparently original signature, mark, stamp, or label of the issuer of the document, unless the document itself indicates that it is not original. Accordingly, unless a document indicates otherwise, it is treated as original if it:

- (A) appears to be written, typed, perforated, or stamped by the document issuer’s hand; or
- (B) appears to be on the document issuer’s original stationery; or
- (C) states that it is original, unless the statement appears not to apply to the document presented (e.g. because it appears to be a photocopy of another document and the statement of originality appears to apply to that other document).

Hand signed documents

Consistent with sub-paragraph (A) above, banks treat as original any document that appears to be hand signed by the issuer of the document.

For example, a hand signed draft or commercial invoice is treated as an original document, whether or not some or all other constituents of the document are preprinted, carbon copied, or produced by reprographic, automated, or computerized systems.

Facsimile signed documents

Banks treat a facsimile signature as the equivalent of a hand

signature. Accordingly, a document that appears to bear the document issuer’s facsimile signature is also treated as an original document.

Photocopies

Banks treat as non-original any document that appears to be a photocopy of another document. If, however, a photocopy appears to have been completed by the document issuer’s hand marking the photocopy, then, consistent with sub-paragraph (A) above, the resulting document is treated as an original document unless it indicates otherwise. If a document appears to have been produced by photocopying text onto original stationery rather than onto blank paper, then, consistent with sub-paragraph (B) above, it is treated as an original document unless it indicates otherwise.

Telefaxed presentation of documents

Banks treat as non-original any document that is produced at the bank’s telefax machine. A letter of credit that permits presentation by telefax waives any requirement for presentation of an original of any document presented by telefax.

Statements indicating originality

Consistent with either or both of sub-paragraphs (A) and (C) above, a document on which the word “original” has been stamped is treated as an original document. A statement in a document that it is a “duplicate original” or the “third of three” also indicates that it is original. Originality is also indicated by a statement in a document that it is void if another document of the same tenor and date is used.

Statements indicating non-originality

A statement in a document that it is a true copy of another document or that another document is the sole original indicates that it is not original.

A statement in a document that it is the “customer’s copy” or “shipper’s copy” neither disclaims nor affirms its originality.

4. What is not an “Original”?

A document indicates that it is not an original if it

- appears to be produced on a telefax machine;
- appears to be a photocopy of another document which has not otherwise been completed by hand marking the photocopy or by photocopying it on what appears to be original stationery; or
- states in the document that it is a true copy of another document or that another document is the sole original.

5. Conclusion

Based upon the comments received from ICC national committees, members of the ICC Banking Commission and other interested parties, the statements in clauses 3 and 4 above reflect international standard banking practice in the correct interpretation of UCP 500 sub-Article 20(b).

ICC ENDORSEMENT OF THE UNCITRAL CONVENTION ON INDEPENDENT GUARANTEES AND STAND-BY LETTERS OF CREDIT

Commission on Banking Technique and Practice, 21 June 1999
On the unanimous consent of its Commission on Banking Technique and Practice, the International Chamber of Com-

merce endorses the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit.

Since its earliest years, ICC has provided important international leadership in the field of international banking operations, particularly as a forum for developing rules of practice. Since 1933, the Uniform Customs and Practice for Documentary Credits (UCP), in its various revisions, has become a universally recognized standard, stating and establishing custom and practice for letters of credit.

In this process, the United Nations Commission on International Trade Law (UNCITRAL), by its endorsement of the subsequent UCP versions, provided an important bridge to those countries who were at the time unable to participate directly in the work of ICC. Other ICC rules, such as Incoterms, have also been endorsed by UNCITRAL, which has contributed to their international acceptance.

ICC rules cannot be fully effective in all countries without their being recognized under local law. In this respect, the recent work of UNCITRAL on the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit provides an important impetus to attain this objective. The Convention sets forth the basic principles of law for independent undertakings in a manner which fully assures their independent nature, which guarantees widest possible party autonomy and which establishes a uniform international legal standard for limits to the exception for fraudulent or abusive drawings.

ICC appreciates that the Convention was drafted in full recognition of the role of the various ICC rules in this field, that the UNCITRAL Working Group was directly and indirectly influenced by, and in turn influenced, the revision of the UCP, ICC's Uniform Rules for Demand Guarantees (URDG) and its recently adopted rules on International Standby Practices (ISP 98). ICC also notes that the UN Convention expressly defers to international banking practice as represented by ICC rules.

THE IMPACT OF THE EUROPEAN SINGLE CURRENCY (euro) ON MONETARY OBLIGATIONS RELATED TO TRANSACTIONS INVOLVING ICC RULES

Commission on Banking Technique and Practice, 6 April 1998
The International Chamber of Commerce (ICC) is the world business organization, based in Paris. The ICC Commissions on Banking Technique & Practice, International Commercial Practice, and Insurance, develop and maintain uniform rules for international trade, including the Uniform Rules for Contract Guarantees (URCG 325), Uniform Rules for Demand Guarantees (URDG 458), Uniform Customs and Practice for Documentary Credits (UCP 500), Uniform Rules for Collections (URC 522), Uniform Rules for Contract Bonds (URCB 524), and Uniform Rules for Bank-to-Bank Reimbursements (URR 525) (hereinafter referred to collectively as "ICC Rules").

The Introduction of the European single currency (euro), shall not have the effect of altering, discharging or excusing performance under any instrument subject to ICC Rules. This Decision emphasizes the need to correctly interpret and apply ICC Rules. Consequently, ICC national committees and associated organizations are strongly urged to distribute this Decision as widely as possible to help ensure the future smooth running of the instruments issued under ICC Rules.

This Decision does not amend any articles of ICC Rules in any way, but merely indicates the correct interpretation thereof which has been adopted unanimously by the ICC Commission on Banking Technique and Practice, on 6 April 1998.

1. General

- 1.1 As of 1 January 1999, the euro will be substituted for the national currency unit of those European Union member states participating in European Economic and Monetary Union (hereinafter, "EMUParticipating States") which are to be designated in May 1998.

During the transitional period running from 1 January 1999 to 31 December 2001, the euro (1 euro = 100 cents) will also be divided into the national currency unit of the EMU-Participating States according to conversion rates which are to be irrevocably fixed by the Council of the European Union as of 1 January 1999 ("conversion rates"). The term "national currency unit" as used below refers to the currency of any EMU-Participating State before 1 January 1999.

During the transitional period persons are free to use either the euro or the national currency unit, but will not (unless otherwise agreed) be obliged to receive or make payment in euro. Any amount denominated either in euro or in a national currency unit of a given EMU-Participating State and payable within that state by crediting an account of the creditor, may be paid by the debtor either in euro or in that national currency unit, with any necessary conversion being effected at the conversion rate.

As of 1 January 1999 the ECU will be replaced by the euro at the rate of one euro to one ECU.

- 1.2 As from 1 January 2002 the national currency unit will cease to exist and the euro will be the only legal currency in the EMUParticipating States; all payments must be in euro.
- 1.3 Continuity of contract will not be affected by the introduction of the euro.
- 1.4 The above principles affecting national currency unit are legally binding in all EMU-Participating States, and apply equally to payment to be made in a national currency unit by persons located outside the European Union, due to the generally accepted legal principle that the definition of what constitutes legal tender is governed by the law of the country whose currency is involved (sometimes referred to as the *lex monetae* principle).
2. Consequences of the introduction of the euro on practice under various ICC rules
 - 2.1 UCP 500 for Documentary Credits (including standby letters of credit). *Below are the different possible cases and the relevant rules of interpretation:*
 - 2.1.1 Documentary credits issued and payable before 1 January 1999 in a national currency unit.
Payment must be made and documents denominated in the currency of the credit.
 - 2.1.2 Documentary credits issued before 1 January 1999 and payable between 1 January 1999 and 1 January 2002 in a national currency unit.

Payment must be made in the currency of the credit, but documents issued between 1 January 1999 and 1 January 2002 may be presented either in the currency of the credit or in the euro equivalent or in the equivalent cross-value in the national currency unit of the beneficiary's place of business; however, where payment is to be made in the currency of an EMU-Participating State and by crediting an account located in such member state, payment may at the debtor's (e.g. issuing bank's) option be effected in the euro equivalent.

- 2.1.3 Documentary credits issued in a national currency unit before 1 January 1999 and payable on or after 1 January 2002.

Payment must be made in euro, but documents issued between 1 January 1999 and 1 January 2002 may be presented either in the currency of the credit or in the euro equivalent or in the equivalent cross-value in the national currency unit of the beneficiary's place of business; documents issued on or after 1 January 2002 must be denominated in euro.

- 2.1.4 Documentary credits issued and payable on or after 1 January 1999 and before 1 January 2002 in a national currency unit or in euro.

Payment must be made in the currency of the credit, but documents issued between 1 January 1999 and 1 January 2002 may be presented in the currency of the credit or in the euro equivalent or in the equivalent cross-value in the national currency unit at the beneficiary's place of business; however, where the currency of the credit is a national currency unit and payment is to be made in the currency of a particular EMU-Participating State by crediting an account located in such member state, payment may at the debtor's (e.g. issuing bank's) option be effected in euro.

- 2.1.5 Documentary credits issued on or after 1 January 1999 but before 1 January 2002 in a national currency unit or in euro and payable on or after 1 January 2002.

Payment must be made in euro, but documents may be presented either in the currency of the credit or, as the case may be, in euro or in the national currency unit of the beneficiary's place of business, provided always that documents issued on or after 1 January 2002 must be denominated in euro.

- 2.1.6 For purposes of examples 2.1.2, 2.1.3, 2.1.4 and 2.1.5 above, documents (including insurance documents mentioned in UCP Art. 34 f) are not considered as being inconsistent with one another, if, within a single presentation of documents, any documents are denominated in the currency of the credit and/or in euro and/or in the national currency unit of the beneficiary's place of business.

- 2.1.7 Documentary credits issued and payable on or after 1 January 2002.

Credits cannot be issued in a national currency unit and must be issued in euro and payment must be made and documents (issued on or after 1 January 2002) denominated in euro.

- 2.1.8 The guidelines set forth in this Decision apply equally to transferable credits. With regard to transferable credits issued in a national currency unit and to be

transferred during the transitional period, the transferring bank may convert the currency and amount of the credit into the euro equivalent.

- 2.2 URCG 325 / URDG 458 / URCB 524 — Guarantees and bonds

The principles set forth above also apply to guarantees and bonds.

- 2.3 URC 522 Collections

Collections must be made in the currency stipulated in the collection instructions. However, if a collection instruction stipulates a national currency unit of an EMU-Participating State, as of 1 January 1999 payment may be made in the euro equivalent and as of 1 January 2002, payment must be made and accepted in the euro equivalent.

- 2.4 URR 525 Bank-to-Bank Reimbursements

Reimbursement claims must be made and honoured in the currency of the reimbursement authorization or reimbursement undertaking.

However, if such currency is the national currency unit of an EMU-Participating State, from 1 January 1999 they may be made and honoured in the euro equivalent, and as from 1 January 2002 they must be made and honoured in the euro equivalent.

Selected Opinions of the ICC Banking Commission on UCP 500

SUB-ARTICLE 9(d)(iii) R 315

Whether an issuing bank and/or advising bank can give a deadline for the notification of an amendment Query We would like to have an interpretation of sub-Article 9(d) of UCP 500. Bank I issued an irrevocable L/C to the beneficiary through the advising/negotiating bank, Bank A, and subsequently issued an amendment to the original terms.

The beneficiary failed to give notification of acceptance or rejection of the amendment. The documents received by Bank A were in full compliance with the terms and conditions of the original L/C.

The questions are:

- 1) In this situation, should we deem that the beneficiary has rejected the amendment?
- 2) Could the issuing bank and/or advising bank give a deadline to such notification, for example 15 days, i.e. if they have not received any message from the beneficiary within 15 days of the date of the amendment they could deem that it has been accepted by the beneficiary?

Analysis

Sub-Article 9(d)(iii) states that the beneficiary should give notification of acceptance or rejection of amendment(s). But it then goes on to state that if he fails to give such notification, the tender of documents to the nominated bank or issuing bank that conform to the credit and to not-yet-accepted amendment(s), will be deemed to be notification of acceptance by the beneficiary of such amendment(s), and, as of that moment, the credit will be amended.

ICC Position Paper No. 1 of 1 September 1994 states: "The Banking Commission strongly disagrees with the wrong practice adopted by:

- a) certain Issuing Banks, of issuing irrevocable documentary

credits, or amendments to irrevocable documentary credits, incorporating a provision to the effect that any amendment will become automatically effective unless formally rejected by the beneficiary within a specified period of time, or by a specified date;

b) certain Advising Banks, of adding a provision of the nature set out

SUB-ARTICLE 14(d) R 332

Does accepting discrepant documents mean that a bank has to accept similar discrepancies on future drawings?

Query

Documents that we had previously presented to an overseas bank were rejected due to the fact that an insurance certificate was presented in lieu of an insurance policy. This discrepancy was accepted by the applicant for the first two shipments.

We have now presented a third set of documents which contained the same discrepancy. The overseas bank has notified us that the applicant refuses to accept the documents on the basis of a certificate instead of a policy of insurance being presented.

We seek your expert advice as to whether this course of action is acceptable.

Analysis and conclusion

The fact that a bank may have previously accepted discrepant documents, with or without an applicant waiver, does not bind that bank to accepting a similar discrepancy(ies) on any future drawing(s) unless local law states otherwise.

in (a) above when advising an irrevocable documentary credit, or an amendment to an irrevocable documentary credit.

The practices referred to above are seen as changing the irrevocable nature of the documentary credit irrevocable undertaking.”

Conclusion

- 1) Yes.
- 2) This is against the principle of an irrevocable documentary credit as stated in UCP and ICC Position Paper No.1. Selected Opinions on UCP 500

SUB-ARTICLES 23(a)(ii) and 23(a)(v) R 349

Whether the phrase “substitute vessel” constitutes a “similar qualification” under sub-Article 23(a)(ii)

Query

We would refer to Document 470.TA18 and request further comment on the basis of a bill of lading which we have accepted in our capacity as negotiating bank.

The bill of lading in question is worded, on its face, as follows: ‘Received from the shipper in apparent good order and condition unless otherwise indicated herein, the goods or the container(s) or package(s) said to contain the cargo herein mentioned to be carried subject to all the terms and conditions provided for on the face and back of this bill of lading, by the vessel named herein or by any additional or substitute vessel or means of transport chosen at the ...’.

The bill of lading has a pre-printed box with the words ‘Shipped on Board the Vessel’ and a place for date and signature.

Questions:

- 1) Is the pre-printed wording ‘Shipped on board the vessel’ of the bill of lading, the ‘pre-printed wording’ of the first paragraph of sub-Article 23(a)(ii) of UCP 500? Can this be considered as ‘notation on the bill of lading’ of the second paragraph of the same Article?
- 2) Is the fine print showing the terms and conditions of the bill of lading to be considered as making the named vessel on the bill of lading as ‘an intended vessel’ although such wording is not present on the bill of lading?
- 3) If the fine print of the above makes the named vessel on the bill of lading as ‘an intended vessel’ and the pre-printed wording ‘Shipped on board the vessel’ an on board notation, then should the name of the vessel already stated under ‘ocean vessel’ on the top left hand of the bill of lading be somehow typed after the pre-printed wording “Shipped on board the vessel’ to make the bill of lading truly conforming to the condition of sub-Article 23 (a)(ii) third paragraph which states that if the bill of lading contains the indication ‘intended vessel’ the on board notation must include the name of the vessel?

The following are questions on the Opinion rendered under Document 470/TA18:

- 1) Does the reply say that the fine print such as the above on the bill of lading make the named vessel ‘an intended vessel’?
- 2) Does it consider the pre-printed wording ‘Shipped on board the vessel’ an on board notation?
- 3) Does the reply say that because the fine print makes the named vessel ‘an intended vessel’ and the pre-printed wording ‘an on board notation’, the name of the vessel has to be somehow typed or written by the carrier after the pre-printed wording ‘Shipped on board the vessel’ to comply with sub-Article 23(a)(ii)?

The following are my own observations for your reference:

- 1) The fine print does not make the named vessel an ‘intended vessel’.
- 2) The pre-printed wording on the bill of lading is not an ‘on board notation’.
- 3) Therefore, in the present bill of lading, the name of the vessel does not have to be repeated after the ‘Shipped on board the vessel’ since it is already stated under ‘ocean vessel’ in the bill of lading.

Analysis and conclusion

Questions:

- 1) The pre-printed wording “Shipped on board the vessel” is not the reference to loading on board as mentioned within the context of sub-Article 23(a)(ii). This is merely the shipping company’s style of inclusion of an on board notation as mentioned in the second paragraph of the above sub-Article. Reference in the sub-Article to “Loading on board or shipment on a named vessel may be indicated by pre-printed wording ...” occurs where the bill of lading states, for example, “Shipped in apparent good order and condition ...” instead of (and as in your case) “Received from the shipper in apparent good order ...”.
- 2) Sub-Article 23(a)(ii) states that: “If the bill of lading contains the indication ‘intended vessel’, or similar qualification in relation to the vessel, loading on board a named vessel must be evidenced by an on board notation on the bill of lading which, in addition to the date on which

the goods have been loaded on board, also includes the name of the vessel on which the goods have been loaded, even if they have been loaded on the vessel named as the ‘intended vessel’ “.

- 3) Sub-Article 23(a)(v) also states: “ ... appears to contain all of the terms and conditions of carriage, or some of such terms and conditions by reference to a source or document other than the bill of lading (short form/blank back bill of lading); banks will not examine the contents of such terms and conditions ... “. Reference in sub-Article 23(a)(v) to terms and conditions relate to those terms of carriage stated on the bill of lading, usually on the reverse of the bill of lading. The reference to a possible “additional” vessel within your bill of lading did not appear within those terms and conditions, but within the general acceptance notice the carrier gives regarding the cargo and the terms of its delivery. Use of the words “by any additional (vessel)” is the equivalent of “intended vessel”.

Where the pre-printed statement “Shipped on board the vessel” appears, this should also have incorporated the name of the actual vessel even if this is the same vessel which appears under the heading “ocean vessel”.

Following extensive deliberations between the ICC Banking Commission and the ICC Commission on Maritime Transport, we are able to reply to the questions on Document 470/TA.18 as follows:

- 1) Yes, but in the context of the inclusion of “by an additional” in the pre-printed text. Use of the words “by any additional (vessel)” would be considered to be a similar qualification to intended vessel in the context of sub-Article 23(a)(ii).
- 2) Yes.
- 3) The ICC Commission on Maritime Transport has provided the following definition on how reference to “substitute vessel” or a “substitute clause” in the pre-printed wording on the face of a bill of lading is to be interpreted: “Without knowing the intention of the drafters of UCP 500, an ‘intended vessel’ equates a ‘vessel to be nominated’ or ‘vessel to be named’ clause. This means that at the time of entering into the contract of carriage no named vessel has been agreed upon. Thus, the carrier may at a late stage nominate the particular vessel with which he wishes to perform the contract of carriage. While it is rare for the carrier to be left with the flexibility to single-handedly decide with which vessel he wishes to perform the contract of carriage after it has been entered into, such situations do occasionally occur in long term contracts.

“A substitution clause is something entirely different. In the absence of a specific agreement to the contrary, the carrier must perform the contract of carriage using the named vessel. Should the carrier, for some reason, not be able to perform the voyage with that vessel (for instance, because of a total loss), he is not entitled to replace it with another one. On the other hand, even if the charterers want the vessel replaced, the carrier is under no obligation to do so.

Because a vessel’s individual characteristics are less important in the liner trade than in the ‘freelance’ seagoing trade, there has been a long-standing practice giving owners the right to substitute the vessel named in liner bills of lading with another vessel. However, it is impor-

tant to note that if a named vessel has been agreed upon, then a right of substitution must have been expressly agreed upon if the carrier is going to perform with a vessel different from that named in the contract of carriage.

Where contracts of carriage provide a substitution clause, the clause will normally be considered an option in the carrier’s favour, i.e. although the carrier has the right to substitute the vessel the charterers cannot force him to do so. However, if the carrier does substitute, he is under the obligation to perform the carriage with a vessel of similar type and characteristics as the originally named vessel.

Should the named vessel suffer a total loss, or be considered a constructive total loss, before the owner has exercised his right of substitution, the carrier has no right to perform with the substitute vessel. This is simply because the carrier, without a very specific agreement to the contrary, has no discretionary right to unilaterally decide whether or not a particular voyage is to be performed. If this were the case, the carrier might be inclined to take into account market conditions before considering whether or not to use his right to substitute.

The legal position is, therefore, that either with or without substitution clauses there is only one vessel linked to the contract of carriage.

If the vessel is lost, so is the contract of carriage and thus the right for the carrier to substitute.

This points to the fact that the mere existence of a substitution clause does not involve the risk of banks that the ‘intended vessel’ does, as long as the right to substitute has not been exercised and as long as the vessel is clearly named in the bill of lading.

The named vessel is therefore a firm choice vessel and any equation of a substitution clause with ‘intended vessel’ is unfounded.”

In the light of this clarification, we would confirm that a bill of lading which in its pre-printed form uses the words “or substitute vessel” is not to be considered as a qualification similar to “intended vessel”, in the context of sub-Article 23(a)(ii). This Opinion replaces that given in Document 470.TA.18 and Opinion No. R.283 appearing in ICC Publication No. 596.

However, due to the inconsistent approach adopted by various shipping lines to the use of phrases such as “substitute vessel” or the like, we are unable to give a definitive opinion that ALL bills of lading incorporating a substitution clause will be acceptable.

For the purposes of this and any future issue(s), a bill of lading using the words “or substitute vessel” or “or any substitute vessel” will not be considered discrepant under the conditions stated in sub-Article 23(a)(ii).

SUB-ARTICLES 20(b), ARTICLES 23 AND 26 AND THE ICC DECISION ON ORIGINAL DOCUMENTS R 433

Where bill of lading and signatures thereon are produced by imaging technology and sent via the Internet, can they qualify as original documents under sub-Article 20(b)?

Query

The purpose of this query is to clarify whether sub-Article

20(b)(ii) applies in relationship to Company A's bills of lading. As background, Company A has used imaging technology to produce our bills of lading since 1996.

The bills of lading are distributed by direct printing and subsequently sent by courier to our customers; or, for approved customers, we send them via the Internet. The documents are identical whether they are printed internally or via the Web as the signature is imaged onto the document.

As we expand our bills of lading into other markets, some banks have raised the question as to whether or not the facsimile signature qualifies under sub-Article 20(b), which reads: 'b. Unless otherwise stipulated in the Credit, banks will also accept as an original document(s), a document(s) produced or appearing to have been produced:

i. ... by reprographic, automated or computerized systems; ii. ... as carbon copies, provided that it is marked as original and, where necessary, appears to be signed.

A document may be signed by handwriting, by facsimile signature, by perforated signature, by stamp, by symbol, or by any other mechanical or electronic method of authentication.'

It is my understanding that International Financial Services Association (IFSA, formerly known as USCIB) has previously supported the fact that Company A's bill of lading is in compliance with sub-Article 20(b) as stated above. Furthermore, we have issued in excess of 500,000 bills of lading in North America, signed with the facsimile signature since 1996. I believe the confusion lies in our ability to deliver the aforementioned bill of lading via the Internet, which may be incorrectly interpreted as an electronic document. Any opinion regarding this matter is appreciated.

Analysis and conclusion

The text of the query includes the wording of sub-Article 20(b) which is relevant to this issue. In addition, the content of the ICC Decision on Original Documents dated 12 July 1999 needs to be recognized.

In that Decision, Section 2, Determination of Originality, states: "Banks undertake to determine whether a document appears on its face to be an original document, as distinguished from a copy. Except as expressly required by a letter of credit (including an incorporated term such as UCP 500 sub-Articles 23(a)(iv) or 34b), banks do not undertake to determine whether an apparent original is the sole original. Banks rely on the apparent intent of the issuer of the document that it be treated as an original rather than a copy. In this regard, a person sending a telefax or making a photocopy on plain paper or pressing through carbon paper presumably intends to produce a copy. On the other hand, a person printing a document on plain paper from a text that that person created and electronically stored presumably intends to produce an original. Accordingly, documents bearing facsimile signatures or printed in their entirety (even including the issuer's letterhead and/or signature) from electronically stored text are presumably intended by the document issuer to be original and in practice are accepted by banks as original."

Section 3.3 of the Decision looks at documents which bear a facsimile signature and states: "Banks treat a facsimile signature as the equivalent of a hand signature. Accordingly, a document that appears to bear the document issuer's facsimile signature is also treated as an original document."

The issue of originality with regard to bills of lading is covered in the context that Articles 23 and 26, for example, re-

quire the presentation of a sole original bill of lading or multimodal transport document.

Such documents either specify on their face that the document is original or within the printed text on the face that "in witness whereof X original bills of lading have been signed ...", or similar wording.

The signature on the bill of lading is classified as being a facsimile one and as such is acceptable under the terms of sub-Article 20(b).

In the context of the printed wording which appears on the face of the bill of lading or multimodal transport document, "originality" can be established. The signature on the bill of lading is classified as being a facsimile one and as such is acceptable under the terms of sub-Article 20(b).

The document, issued as described above, would be acceptable under UCP 500.

SUB-ARTICLES 34(f)(ii), 34(e) AND 35(b) R 458

Questions concerning whether insurance must be precisely 110% or whether it can be rounded up; if the credit is silent regarding the insurance coverage, must the insurance cover the entire voyage reflected in the transport document?

Query

A bank has made the following enquiries regarding international standard banking practice with regard to insurance requirements in a letter of credit subject to UCP500:

Questions:

- 1) If the credit is silent regarding the amount of insurance coverage required, and the invoice amount is USD 99.00 CIF or CIP, must the insurance be precisely 110% (i.e. USD 108.00) or may it be for a larger percentage? If a larger percentage is permitted, is there an upper limit?
- 2) If the credit stipulates "Insurance for 110% invoice value" and the invoice is USD 99.00, must the insurance coverage be precisely 110% (i.e. USD 108.00) or may it be rounded up to USD 110.00 (which is actually 111.1111%) for example? If it may not be rounded up by such a small percentage, why is 110% a minimum in number 1 above and why should this same 10 % addition not be permitted here?
- 3) If in question number 2 the amount may be rounded up, is there a percentage, for example 5% or 10%, which may be applied?
- 4) If the credit is silent regarding the insurance coverage (sub-Article 35(b)), must the insurance cover the entire voyage reflected in the transport document, or is it sufficient to evidence an effective date of coverage as in sub-Article 34(e)? – i.e. cover may be effective on the proper date but may only cover a portion of the voyage reflected in the transport document.
- 5) In sub-Article 34(f)(ii), what do the words "100% of the gross amount of the invoice" mean in practice? For example, do they mean an invoice reflecting a payment schedule for goods or an invoice reflecting prepayments or other deductions?

Analysis

Sub-Article 34(e) reads: "Unless otherwise stipulated in the Credit, or unless it appears from the insurance document that the cover is effective at the latest from the date of loading on board or dispatch or taking in charge of the goods, banks will

not accept an insurance document which bears a date of issuance later than the date of loading on board or dispatch or taking in charge as indicated in such transport document.”

Sub-Article 34(f)(ii) reads: “Unless otherwise stipulated in the Credit, the minimum amount for which the insurance document must indicate the insurance cover to have been effected is the CIF (cost, insurance and freight (... “named port of destination”)) or CIP (carriage and insurance paid to (... “named place of destination”)) value of the goods, as the case may be, plus 10%, but only when the CIF or CIP value can be determined from the documents on their face. Otherwise, banks will accept as such minimum amount 110% of the amount for which payment, acceptance or negotiation is requested under the Credit, or 110% of the gross amount of the invoice, whichever is the greater.”

Sub-Article 35(b) reads: “Failing specific stipulations in the Credit, banks will accept insurance documents as presented, without responsibility for any risks not being covered.”

Conclusion

Question 1

Where the credit is silent as to the (minimum) amount of coverage, sub-Article 34(f)(ii) states the insurance document must be issued for a minimum of 110% of the CIF or CIP value. The UCP does not provide for any maximum percentage (ICC opinion under reference TA.111).

Question 2

The inclusion in an L/C of a term such as “Insurance for 110% invoice value” is a bank’s way of trying to mirror the UCP requirement of 110%. However, it has not always been translated as such. Consistent with the UCP construction, banks that issue credits with such a clause are generally looking for a minimum coverage rather than an exact one. If a bank requires the insurance document to be issued for exactly ICC Uniform Customs and Practice for Documentary Credits 87 X% or X amount or words to similar effect, then the credit must expressly state this requirement. *This opinion overrides Issue 2 of query R195 which appears in ICC Publication No. 565.*

Question 3

Not applicable.

Question 4

Unless otherwise stipulated in the credit, the insurance document must cover the entire journey between the place from which the credit stipulates the goods are to be shipped or dispatched and the place to which the credit stipulates the goods are to be shipped/delivered.

Question 5

100% of the gross amount of the invoice is the value of the goods before any deduction. For example, a credit which is issued for USD 100,000.00 and allows for 80% to be drawn against shipping documents with 20% having been paid in advance. This would entail the beneficiary producing an invoice for 100% of the goods value (USD 100,000.00) and showing a deduction in respect of the advance payment – resulting in a bottom line figure of USD 80,000.00

In this case, the insurance must be for a minimum of 110% of the gross amount of the goods (goods value USD 100,000.00 plus minimum 10%) and not a minimum of 110% of USD 80,000.00.

RULES OF ARBITRATION - INTERNATIONAL CENTER FOR LETTER OF CREDIT ARBITRATION, INC. (ICLOCA)

I. Introduction

Letters of credit have achieved their status as a universally recognized means of assurance of payment because their documentary character lends itself to summary payment or, in the event of a dispute, summary resolution. Because letter of credit law and practice is highly specialized and often counter-intuitive to the general commercial lawyer, the judicial process has not generally afforded the speedy, final, certain and sound relief desired by parties to a letter of credit dispute. For similar reasons, this observation also applies to independent guarantees, documentary collections, funds transfers and other mechanisms for the assurance of payment in trade and commerce.

It is the goal of these Rules and the arbitration system with which they are linked to provide an expedited, principled, and final resolution of disputes involving trade finance by recognized experts in law and practice in a cost efficient manner.

These Rules are modelled upon the highly successful and time-tested UNCITRAL Arbitration Rules with modifications necessitated by the use of expert arbitrators, the frequent possibility of summary disposition, and the use of an administrative center.

International Center for Letter of Credit Arbitration

The International Center for Letter of Credit Arbitration (the “Center”) was founded as a result of an initiative from within the letter of credit community. The Center has been created after extensive consultation with corporate, legal and banking representatives throughout the United States and the world. The Center was formally established in September of 1996 and is located in metropolitan Washington, D.C.

The Center has two main purposes, namely, to act as an administrative authority and a resource center for information, training, and research for letter of credit related disputes.

ICLOCA Arbitration Council

The ICLOCA Arbitration Council is composed of representatives of the private and public sectors. Its role is to provide advice and make recommendations to the Center on matters of planning and policy.

ICLOCA Consultative Council

The ICLOCA Consultative Council is composed of leading experts in the fields of arbitration and letters of credit. The principal function of this body is to provide advisory opinions to the Center on non-routine issues where the Rules require a decision by the Center during the course of the administration of an arbitration, such as, the challenge, release or replacement of an arbitrator and certain questions concerning arbitrator fees. When this is required, the Center will convene an *ad hoc* committee composed of members of the Consultative Council. In special circumstances the Center may also appoint an outside expert who is not a member of the Consultative Council to serve on an *ad hoc* committee.

II. ICLOCA Services

What type of disputes may be referred to the Center under these Rules?

The Center was created to assist in the resolution of disputes arising out of international banking operations including

letters of credit, confirmations or advices, documentary collections, funds transfers, and similar matters.

What are the available means of dispute resolution?

The Rules provide for one type of dispute resolution, arbitration. Arbitration is designed to lead to a binding and enforceable resolution of the dispute outside the court system. The Center will, upon request, provide assistance in conciliation and other ADR methods.

Who may refer disputes to the Center?

The services of the Center are available to all persons. There is no requirement that a person be affiliated in any way with any State, business sector or organization. Individuals and entities having a recognized legal personality may submit disputes to the Center for arbitration.

How to refer disputes to the arbitration?

There are two circumstances in which a dispute might be referred to arbitration under the ICLOCA Rules and administered by the Center.

- 1) A clause may be inserted into the undertaking or agreement providing that all future disputes arising out of, in connection with or relating to that undertaking or agreement be submitted to the Center for resolution under these Rules.
- 2) An existing dispute may also be referred to the Center for resolution by agreement of the parties, even if there was no advance agreement to arbitration.

Recommended clauses are contained in section VI.

Under either circumstance, once a dispute has arisen, a party desiring arbitration gives written notice to the Center and the other party in the form of a "Notice of Arbitration." (See article 3)

What is the system of arbitration established under these Rules?

The primary characteristic of this system is that the arbitration is conducted by experts from the relevant fields of international banking operations under procedures which facilitate summary disposition with the assistance of an established administrative center.

What is the role of the Center under the Rules?

The Center serves as administrative resource for the arbitration, an appointing authority for the arbitral tribunal, and an administrator for any challenges to the appointment of an arbitrator.

How is the arbitral tribunal constituted?

1. Number of arbitrators
Unless the parties agree otherwise, the arbitral tribunal will consist of one arbitrator. (Article 5)
2. How are the arbitrators appointed?
If there is one arbitrator, he or she will be appointed by the Center unless the parties agree on an appointment (Article 6)
3. Mechanism for Appointment from the List of Accredited Arbitrators
In order to ensure the expertise of the arbitrator in international banking operations and his or her training in arbitration matters, the Center maintains a list of Accredited

Arbitrators. If an arbitrator is appointed from outside the List, the appointment must be confirmed by the Center in order to ensure that ICLOCA arbitrations are conducted by internationally recognized experts. (Article 8). Even if appointed by one party, the arbitrator does not represent that party. (Articles 4, 9 & 10)

4. Challenges to Arbitrators

The Rules provide that their arbitrator may be challenged if circumstances exist that give rise to justifiable doubts concerning his or her independence or impartiality (see Articles 10 to 13).

Before deciding on a challenge, the Center may seek the advice of any member or members of the Consultative Council.

5. The Dispute Resolution Procedure

Arbitration is a procedure whereby a dispute is submitted to a non judicial arbitral tribunal composed of one or more arbitrators who render a decision that is binding on the parties. With regard to letters of credit and similar undertakings, arbitration arises by the incorporation of an arbitration clause into a letter of credit or other undertaking or by the submission of an existing dispute by agreement of the parties. If the clause adopts the ICLOCA Rules, the Rules set forth the procedure to be followed including selection of the arbitral tribunal, its powers, the rights and obligations of the parties, and the role of the Center.

Are arbitral awards final?

Decisions rendered by the arbitral tribunal in the form of an award are final and binding on the parties and not subject to an appeal on the merits to a court of law. In the majority of cases involving international arbitration, the parties comply with the award without the need to seek court enforcement. Where court enforcement is necessary, the procedure is relatively straightforward by virtue of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. More than 110 Countries (including the U.S.) are party to the New York Convention, which obliges contracting States to recognize and enforce foreign arbitral awards, with a few very limited and specified exceptions.

What administrative services are provided by the Center?

In addition to its role in the appointment process, the Center

- receives the various papers filed until the creation of the arbitral tribunal (Article 15)
- determines the place of arbitration unless agreed upon by the parties (Article 16)
- will assist with the logistical support for arbitration.
- receives the award, promulgates it, and makes any necessary filing.

Stenographic Transcripts and Interpretation

At the request of the parties or the arbitral tribunal, the Center will assist the arbitral tribunal in making arrangements for stenographic transcripts or interpretation of hearings. These costs are not included in the administrative fee and will be billed separately.

Fees and Deposits

The Center will make all arrangements concerning the amounts

of arbitrator's fees and administrative fees and costs, including advance deposits for those fees and costs (see articles 38 and 41). All fees are collected by and paid to the Center. For complete details regarding the schedules for registration, administrative and arbitrator's fees, see section V.

Other Services

The Center will consider providing other appropriate administrative services upon request.

III. Conferences and Training Programs

The Center organizes conferences and seminars designed for the letter of credit community introducing the ICLOCA system and on specific issues related to the resolution of letter of credit disputes. It also conducts training programs specifically designed for arbitrators, so as to perfect their skills in conducting proceedings and writing awards. The training programs are designed for a limited number of participants and are intended to teach skills and provide valuable insight into the arbitration of disputes under the ICLOCA Rules. Details regarding these conferences and training programs are available from the Center.

IV. ICLOCA List of Accredited Arbitrators

The Center maintains a list of persons who are specially qualified to act as arbitrators under its Rules (see Article 8). This List contains information on each person's experience and specialized expertise in the various aspects of letter of credit law, practice and related areas.

This List is the primary source used by the Center when it is called upon to make recommendations or appointments. The parties can appoint an arbitrator from outside the Center's List, but any such appointment is subject to confirmation by the Center. Parties may obtain a copy of the ICLOCA List of Accredited Arbitrators from the Center.

V. Fee Schedules for ICLOCA Arbitration

Note: Unless otherwise stated, all fees are expressed and payable in United States dollars.

Registration Fees to be paid by the Claimant when filing (non refundable): To cover the cost of initiating the arbitration, a registration fee of \$1,000 shall be payable. For this purpose, counterclaims are treated separately.

Administrative Fees The administrative fees are the costs of administering the arbitration in addition to the registration fee. They are fixed at the end of the proceedings in the Award (Articles 38-40). As a rule, the Center will request from the parties in accordance with Article 41 deposits as advance payments of the likely cost of the arbitration as estimated at the beginning of the proceedings and supplemented as necessary during the course of the arbitration.

1. Where the amount of the claim or counter-claim is not specified, the Center shall determine an appropriate administrative fee.
2. The amount of a counterclaim will be added to the amount of the claim for the purpose of calculating the administrative fee only if the portion of the deposit assessed to the respondent is paid within 30 days of the assessment. Otherwise the counterclaim shall be stricken from the proceeding and must be filed separately.

3. Should the amount at issue increase during the pendency of the arbitration, the administrative fee will be recalculated accordingly.
4. Where the amount of the claim is expressed in a currency other than United States Dollars, for the purposes of calculating the administrative fee, the claimed amount will be converted into an amount specified in United States Dollars on the basis of the official United Nations' exchange rate prevailing on the date of submission of the Notice of Arbitration.

Amount of Claim	Administrative Fee
Up to \$100,000	\$1,500
\$100,001 - \$500,000	\$1,500 + 1.25%
\$500,001 - \$1,000,000	\$6,500 + 0.80%
\$1,000,001 - \$2,000,000	\$10,500 + 0.40%
\$2,000,001 - \$5,000,000	\$14,500 + 0.10%
\$5,000,001 - \$10,000,000	\$17,500 + 0.05%
Over \$10,000,000	\$20,000 + 0.03% (maximum of \$40,000)

Arbitrator Fees In addition to the Administrative fees, the fees of the arbitrators must be paid. These fees are to be paid directly to the Center:

1. For the purpose of calculating the amount of the claims, the value of any counter-claim is added to the amount of the claim.
2. For the purpose of calculating the amount of the arbitrator's fee, the percentage figure is applied to each successive part of the amount of the claim or counter-claim.
3. Where a claim or counter-claim is not for a monetary amount, the Center shall, after consultation with the arbitrator(s) and the parties, determine an appropriate value for the claim and counter-claim for the purpose of determining the arbitrator's fee.
4. Arbitrator fees will be fixed within the range indicated in this schedule by the Center in consultation with the arbitrator(s) and parties based upon the amount in dispute, the complexity of the subject-matter, the time spent by the arbitrators and any other relevant circumstances of the case (see article 39).
5. Where the amount of the claim is expressed in a currency other than United States Dollars, for the purposes of calculating the administrative fee, the claimed amount will be converted into an amount specified in United States Dollars on the basis of the official United Nations exchange rate prevailing on the date of submission of the Notice of Arbitration.

VI. Model Clauses for Arbitration Under ICLOCA Rules of Arbitration

A. Arbitration Clause for Future Disputes

1. To be inserted into a letter of credit, confirmation, advice, or other independent guarantee, counter-guarantee, collection letter, or reimbursement instructions:

Suggested form:

Any dispute, controversy or claim arising out of or relating to this undertaking or the dishonor, termination or invalidity thereof shall be finally settled by arbitration administered by the International Center for Letter of Credit Arbitration, Inc., under its Rules of Arbitration (1996).

Abbreviated form:

The Center encourages the parties at the time of drafting their arbitration clause to use and where appropriate elaborate on the form suggested. If it is absolutely necessary to utilize a shorter form, the following language is suggested: *All disputes subject to arbitration under ICLOCA Rules of Arbitration (1996).*

2. To be inserted into a reimbursement agreement/application:
Any dispute, controversy or claim arising out of or in relation to this reimbursement agreement or application or the letter of credit issued pursuant to it, or the breach, dishonor, termination or invalidity thereof, shall be finally settled by arbitration administered by the International Center for Letter of Credit Arbitration, Inc., under its Rules of Arbitration (1996).

B. Submission of Existing Dispute (Submission Agreement)

3. To be inserted into a signed agreement to arbitrate a currently existing dispute:

We, the undersigned, hereby agree to submit to arbitration administered by the International Center for Letter of Credit Arbitration, Inc., under its Rules of Arbitration (1996), the following controversy:

[insert a description of the dispute].

We further agree to perform this agreement to arbitrate and to observe these Rules.

INTERNATIONAL CENTER FOR LETTER OF CREDIT ARBITRATION, INC. (ICLOCA)

Rules of Arbitration for Letter of Credit Disputes August 1996

These Rules are based on the UNCITRAL Arbitration Rules and are primarily designed for arbitration of disputes involving letters of credit and similar mechanisms for the assurance of payment such as independent guarantees, documentary collections and funds transfers, under the auspices of the International Center for Letter of Credit Arbitration, Inc.

Preamble

Letters of credit have achieved their status as a universally recognized means of assurance of payment because their documentary character lends itself to summary payment or, in the event of a dispute, summary resolution. Because letter of credit law and practice is highly specialized and often counter-intuitive to the general commercial lawyer, the judicial process has not generally afforded the speedy, certain and sound relief desired by parties to a letter of credit dispute. For similar reasons, this observation also applies to independent guarantees, documentary collections, funds transfers and other mechanisms for the assurance of payment in trade and commerce.

It is the goal of these Rules and the arbitration system with which they are linked to provide an expedited, principled resolution of disputes involving trade finance by recognized experts in law and practice in a cost efficient manner.

These Rules are modelled upon the highly successful and time-tested UNCITRAL Arbitration Rules with modifications necessitated by the expert arbitrators, the frequent possibility of summary disposition based upon documentary and stipulated evidence common in this field, and the use of an administrative center.

Article 1

Scope of Application

1. Where a letter of credit, independent guarantee, collection instruction, reimbursement undertaking, or other agreement or undertaking (whether independent or not) (hereinafter called the "undertaking") provides that it is subject to arbitration under these Rules or that disputes shall be submitted to arbitration by the International Center for Letter of Credit Arbitration, Inc. (hereinafter called the "Center"), disputes, controversies or claims relating to the undertaking, whether domestic or international, between any two or more persons causing it to be issued, issuing it or acting upon it shall be settled in accordance with these Rules subject to any modification.
2. These Rules shall govern the arbitration except that where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.
3. The Center shall act as appointing authority and administer arbitrations conducted under these Rules.

Article 2

Notice, Calculation of Periods of Time

1. For the purposes of these Rules, any notice, including a notification, communication or proposal, is deemed to have

Arbitrator Fees

Sole Arbitrator Fees

Amount of Claim	Minimum Arbitrators Fee	Maximum Arbitrators Fee
Up to \$50,000	\$1,000	10% (of amount but not below minimum)
\$50,001 - \$100,000	\$1,000 + 1.50% (of amount over \$50,000)	\$4,000 + 2.50% (of amount over \$50,000)
\$100,001 - \$500,000	\$1,750 + 0.80% (of amount over \$100,000)	\$5,250 + 2% (of amount over \$100,000)
\$500,001 - \$1,000,000	\$4,950 + 0.50% (of amount over \$500,000)	\$13,250 + 1.50% (of amount over \$500,000)
\$1,000,001 - \$2,000,000	\$7,450 + 0.30% (of amount over \$1,000,000)	\$20,750 + 1% (of amount over \$1,000,000)
\$2,000,001 - \$5,000,000	\$10,450 + 0.20% (of amount over \$2,000,000)	\$30,750 + 0.50% (of amount over \$2,000,000)
\$5,000,001 - \$10,000,000	\$16,450 + 0.10% (of amount over \$5,000,000)	\$45,750 + 0.30% (of amount over \$5,000,000)
Over \$10,000,000	\$21,450 + 0.05% (of amount over \$10,000,000)	\$60,750 + 0.10% (of amount over \$10,000,000)

Three Arbitrators' Fees (The fee will be divided between the three arbitrators according to a formula set by the Center.)

Amount of Claim	Minimum Arbitrators Fee	Maximum Arbitrators Fee
Up to \$50,000	\$1,000	20% (of amount but not below minimum)
\$50,001 - \$100,000	\$2,500 + 3.75% (of amount over \$50,000)	\$10,000 + 6.25% (of amount over \$50,000)
\$100,001 - \$500,000	\$4,375 + 2.00% (of amount over \$100,000)	\$13,125 + 5.00% (of amount over \$100,000)
\$500,001 - \$1,000,000	\$12,375 + 1.25% (of amount over \$500,000)	\$33,125 + 3.75% (of amount over \$500,000)
\$1,000,001 - \$2,000,000	\$18,625 + 0.75% (of amount over \$1,000,000)	\$51,875 + 2.50% (of amount over \$1,000,000)
\$2,000,001 - \$5,000,000	\$26,125 + 0.50% (of amount over \$2,000,000)	\$76,875 + 1.25% (of amount over \$2,000,000)
\$5,000,001 - \$10,000,000	\$41,125 + 0.25% (of amount over \$5,000,000)	\$114,375 + 0.75% (of amount over \$5,000,000)
Over \$10,000,000	\$53,625 + 0.125% (of amount over \$10,000,000)	\$151,875 + 0.25% (of amount over \$10,000,000)

been received if it is physically delivered to the addressee or if it is delivered at its place of business, mailing address or habitual residence, or, if none of these can be found after making reasonable inquiry, then at the addressee's last-known place of business or residence. Notice shall be deemed to have been received on the day it is so delivered.

2. For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice, notification, communication or proposal is received. If the last day of such period is an official holiday or a non-business day at the place of business or residence of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.
3. The Center or the arbitral tribunal may, at the request of the parties or on its own motion, extend the periods of time referred to in these Rules or set by it in accordance with these Rules.

Article 3

Notice of Arbitration

1. The party initiating recourse to arbitration (hereinafter called the "claimant") shall give a notice of arbitration in writing to the Center and to the other party (hereinafter called the "respondent"). In these Rules the terms "claimant", "respondent", "person" and "party" used in the singular include the plural as the context may require.
2. Arbitral proceedings shall be deemed to commence on the date on which the notice of arbitration is received by the Center.
3. The notice of arbitration shall include the following:
 - a) A demand that the dispute be referred to arbitration;
 - b) A reference to the arbitration clause or the separate arbitration agreement that is invoked;
 - c) A proposal as to the number of arbitrators (i.e. one or three) if the parties have not previously agreed thereon;
 - d) The statement of claim referred to in article 18.
4. The notice of arbitration shall be accompanied by payment of the registration fee set by the Center.

Article 4

Representation

The parties may be represented by persons of their choice. The names and addresses of such persons must be communicated in writing to the other party, the Center and, after its establishment, the arbitral tribunal.

Section II: Composition of the Arbitral Tribunal

Article 5

Number of Arbitrators

If the parties have not agreed on whether the arbitral tribunal shall be composed of one or three arbitrators within fifteen days after the commencement of the arbitration, there shall be a sole arbitrator.

Article 6

Appointment of a Sole Arbitrator

1. Where a sole arbitrator is to be appointed, the arbitrator shall be appointed jointly by the parties.

2. If, within thirty days after the commencement of the arbitration, the parties have not agreed upon the arbitrator, the appointment shall be made by the Center as promptly as possible.
3. In making the appointment, the Center shall have due regard to the expertise and competence required and, for that reason, to the advisability of selecting an arbitrator from the List of Accredited Arbitrators established by it.

Article 7

Appointment of Three Arbitrators

1. If three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the tribunal.
2. If a party within thirty days after the commencement of the arbitration has not appointed an arbitrator, the arbitrator shall be promptly appointed by the Center in accordance with article 6, paragraph 3.
3. If within thirty days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, the presiding arbitrator shall be promptly appointed by the Center in accordance with article 6, paragraph 3.
4. If there is more than one claimant or respondent and three arbitrators are to be appointed, the claimants or respondents, as the case may be, shall jointly appoint an arbitrator. If within thirty days after the commencement of the arbitration, they have not made a joint appointment for whatever reason, any appointment previously made by the other party shall be deemed to be void, and the Center shall promptly appoint all three arbitrators in accordance with article 6, paragraph 3 and designate the presiding arbitrator.

Article 8

Confirmation of Appointment

1. The Center shall maintain a List of Accredited Arbitrators (hereinafter called the "List").
2. Where a person not listed in the Center's List is appointed under article 6 paragraph 1 or article 7, paragraph 1, the appointment is subject to confirmation by the Center which shall be provided by an appointing person with the full name, address and qualifications of the appointee and with the appointee's acceptance of appointment.
3. If the Center does not confirm the appointment of an arbitrator, it shall notify the appointing person or persons who shall have ten days to appoint another arbitrator from the Center List. In the case of a failure to do so, the Center shall appoint an arbitrator in the same way as a sole arbitrator would be appointed under article 6, paragraph 3.
4. The Center shall notify the parties of the establishment of the arbitral tribunal.

Article 9

Disclosure

Prospective arbitrators shall disclose to those who approach them in connection with their possible appointment any circumstances likely to give rise to justifiable doubts as to their impartiality or independence. Arbitrators, once appointed or chosen, shall disclose such circumstances to the parties and to the Center unless they have already been informed of these circumstances.

Article 10

Challenge of Arbitrators

1. Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.
2. A party may challenge an arbitrator whom it has appointed or to whose appointment it has agreed only for reasons of which it becomes aware after the appointment has been made.
3. Decisions of the Center as to the appointment, confirmation, challenge or replacement of an arbitrator shall be final.

Article 11

Procedure for Challenge

1. A party who intends to challenge an arbitrator shall send notice of its challenge within fifteen days after the appointment of the challenged arbitrator has been notified to the challenging party or within fifteen days after the circumstances mentioned in articles 9 and 10 became known to that party.
2. The challenge shall be notified to the other party, to the arbitrator who is challenged, to the other members of the arbitral tribunal and to the Center. The notification shall be in writing and shall state the reasons for the challenge.
3. When an arbitrator has been challenged by one party, the other party may agree to the challenge. The arbitrator may also, after the challenge, withdraw from office. In neither case does this imply acceptance of the validity of the grounds for the challenge. In both cases the procedure provided in article 6 or 7 shall be used in full for the appointment of the arbitrator being replaced, even if during the process of appointing the challenged arbitrator a party had failed to exercise its right to appoint or to participate in the appointment.

Article 12

Release from Appointment

1. If the other party does not agree to the challenge and the challenged arbitrator does not withdraw, the decision on the challenge will be made by the Center.
2. If the Center sustains the challenge, a substitute arbitrator shall be appointed or chosen pursuant to the procedure applicable to the appointment or choice of an arbitrator as provided in article 6 or 7.

Article 13

Replacement of an Arbitrator

1. In the event of the death or resignation of an arbitrator during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in articles 6 to 9 that was applicable to the appointment or choice of the arbitrator being replaced.
2. In the event that an arbitrator fails to act or in the event of the *de jure* or *de facto* impossibility of him or her performing their functions, the procedure in respect of the challenge and replacement of an arbitrator as provided in the preceding articles shall apply.

Article 14

Repetition of Hearings in the Event of the Replacement of an Arbitrator

If under articles 11 to 13 the sole or presiding arbitrator is replaced, any hearings held previously shall be repeated; if any other arbitrator is replaced, such prior hearings may be repeated at the discretion of the arbitral tribunal.

Section III: Arbitral Proceedings

Article 15

General Provisions

1. Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting its case.
2. The arbitral tribunal shall decide whether to hold hearings for the presentation of evidence by witnesses, including expert witnesses, or oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials.
3. All documents or information supplied to the arbitral tribunal by one party shall at the same time be communicated by that party to the other party and the Center. The arbitral tribunal shall send a copy of any communication with the parties to the Center.
4. Except as otherwise provided in these Rules or permitted by the arbitral tribunal, no party or anyone acting on its behalf may have any *ex parte* communication with any arbitrator with respect to any matter of substance relating to the arbitration, it being understood that nothing in this paragraph shall prohibit *ex parte* communications which concern matters of a purely organizational nature, such as the physical facilities, place, date or time of the hearings.

Article 16

Place of Arbitration

1. Unless the parties have agreed upon the place where the arbitration is to be held, such place shall be determined by the Center having due regard to the circumstances of the arbitration. However, the arbitral tribunal may meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for the inspection of goods, other property or documents. The parties shall be given sufficient notice to enable them to be present at such place.
2. The award shall be deemed to be made at the place of arbitration.

Article 17

Language

1. The language to be used in the proceedings is the one chosen by the parties. Failing such choice, the language to be used is that of the undertaking at issue unless and until the arbitral tribunal determines otherwise. This determination shall apply to the notice of arbitration, the statement of claim, the statement of defence, and any further written statements and, if oral hearings take place, to the language to be used in such hearings.

2. The arbitral tribunal may order that any documents annexed to the statement of claim or statement of defence, and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation of the entire document, or any part thereof, into the language agreed upon by the parties or determined by the arbitral tribunal.

Article 18

Statement of Claim

The statement of claim shall include the following particulars:

- a) The names and addresses of the parties;
- b) A statement of the facts supporting the claim;
- c) The points at issue;
- d) The relief or remedy sought;
- e) A copy, if applicable, of the undertaking upon which the claim is based. The claimant may annex other relevant documents relied upon in its claim, or may add a reference to the documents or other evidence to be submitted.

Article 19

Statement of Defence

1. Within thirty days after the commencement of the arbitration, the respondent shall communicate its statement of defence in writing to the claimant and the Center.
2. The statement of defence shall reply to the particulars (b), (c) and (d) of the statement of claim (article 18). The respondent may annex to the statement of defence the documents relied upon for its defence.
3. In the statement of defence, or at a later stage in the arbitral proceedings if the arbitral tribunal decides that the delay was justified under the circumstances, the respondent may make a counter-claim arising out of or relating to the same or related undertaking or rely on a claim arising out of or relating to the same or related undertaking for the purpose of a set-off.
4. The provisions of article 18 shall apply to a counter-claim and a claim relied on for the purpose of a set-off.

Article 20

Amendments to the Claim or Defence

During the course of the arbitral proceedings any party may amend or supplement its claim or defence unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances. However, a claim may not be amended in such a manner that the amended claim falls outside the scope of the arbitration clause or separate arbitration agreement.

Article 21

Pleas as to Jurisdiction and Powers of the Arbitral Tribunal

1. The arbitral tribunal shall have the power to rule on objections that it has no jurisdiction, including any objections with respect to the existence or validity of the arbitration clause or of the separate arbitration agreement.
2. The arbitral tribunal shall have the power to determine the

existence or validity of the undertaking of which an arbitration clause forms a part. For the purposes of this article, an arbitration clause which forms part of an undertaking and which provides for arbitration under these Rules shall be treated as independent of the other terms of the undertaking. A decision by the arbitral tribunal that the undertaking is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

3. A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than in the statement of defence or, with respect to a counter-claim, in the reply to the counter-claim. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.
4. In general, the arbitral tribunal should rule on a plea concerning its jurisdiction as a preliminary question. However, the arbitral tribunal may proceed with the arbitration and rule on such a plea in its final award.

Article 22

Further Written Statements

The arbitral tribunal shall decide which further written statements, in addition to the statement of claim and the statement of defence, shall be required from the parties or may be presented by them and shall fix the period of time for communicating such statements.

Article 23

Periods of Time

The periods of time fixed by the arbitral tribunal for the communication of written statements should not exceed twenty-one days. However, the arbitral tribunal may extend the time limits if it concludes that an extension is justified.

Article 24

Evidence

1. Each party shall have the burden of proving the facts relied upon to support its claim or defence.
2. The arbitral tribunal may, if it considers it appropriate, require a party to deliver to the tribunal and to the other party, within such a period of time as the arbitral tribunal shall decide, a summary of the documents and other evidence which that party intends to present in support of the facts in issue set out in its statement of claim or statement of defence.
3. At any time during the arbitral proceedings the arbitral tribunal may require the parties to produce documents, exhibits, or other evidence within such a period of time as the tribunal shall determine.

Article 25

Oral Hearings

1. In the event of a preparatory conference or an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place thereof. The arbitral tribunal may conduct a preparatory conference or a hearing in any manner it deems appropriate including by teleconference, video conference or similar means of communication.

2. If witnesses are to be heard, at least fifteen days before the hearing each party shall communicate to the arbitral tribunal and to the other party the names and addresses of the witnesses it intends to present, the subject upon and the languages in which such witnesses will give their testimony.
3. The Center shall make arrangements for the translation of oral statements made at a hearing and for a record of the hearing if either is deemed necessary by the arbitral tribunal under the circumstances of the case, or if the parties have agreed thereto and, in either case, such request is communicated to the Center at least fifteen days before the hearing.
4. Hearings shall be held *in camera* unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witness or witnesses during the testimony of other witnesses. The arbitral tribunal may determine the manner in which witnesses are examined.
5. Evidence of witnesses may also be presented in the form of written statements signed by them.
6. The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

Article 26

Interim Measures of Protection

1. At the request of any party, the arbitral tribunal, in its sole discretion may take any interim measures it deems necessary in respect of the subject matter of the dispute, including measures for conservation of the funds, disposition of documents or goods forming the subject matter in dispute, such as ordering their deposit with a third person or the delivery and/or sale of time sensitive goods or documents or ordering that presentation of documents or payment be made or withheld.
2. Such interim measures may be established in the form of an interim award. The arbitral tribunal shall be entitled to require security for such measures.
3. A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

Article 27

Experts

1. The arbitral tribunal may appoint one or more experts to report to it, in writing, on specific issues to be determined by the arbitral tribunal. A copy of the expert's terms of reference, established by the arbitral tribunal, shall be communicated to the parties.
2. The parties shall give the expert any relevant information or produce for his or her inspection any relevant documents or goods required of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.
3. Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties who shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in his or her report.
4. At the request of either party the expert, after delivery of the report, may be heard at a hearing where the parties

shall have the opportunity to be present and to interrogate the expert. At this hearing either party may present expert witnesses in order to testify on the points at issue. The provisions of article 25 shall be applicable to such proceedings.

Article 28

Default

1. If, within the period of time provided for in article 19 paragraph 1, the respondent has failed to communicate the statement of defence without showing sufficient cause for such failure, the arbitral tribunal shall order that the proceedings continue.
2. If one of the parties, duly notified under these Rules, fails to appear at a hearing without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.
3. If one of the parties, duly invited to produce documentary evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence before it.

Article 29

Closure of Hearings

1. The arbitral tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.
2. The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own motion or upon application of a party, to reopen the hearings at anytime before the award is made.

Article 30

Waiver of Rules

A party who knows that any provision of, or requirement under, these Rules has not been complied with and yet proceeds with the arbitration without promptly stating its objection to such non-compliance, shall be deemed to have waived its right to object.

Section IV: The Award

Article 31

Decisions

1. When there are three arbitrators, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators.
2. In the case of questions of procedure, when there is no majority or when the arbitral tribunal so authorizes, the presiding arbitrator may decide on his or her own, subject to revision, if any, by the arbitral tribunal.

Article 32

Form and Effect of the Award

1. In addition to making a final award, the arbitral tribunal shall be entitled to make interim, interlocutory or partial awards.
2. The award shall be made in writing and shall be final and binding on the parties. By submitting the dispute to

arbitration by the Center, the parties shall be deemed to have undertaken to carry out the resulting award without delay and to have waived their right to any form of appeal insofar as such waiver can validly be made.

3. The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.
4. The arbitral tribunal may consult the Center with regard to matters of form particularly to ensure the enforceability of the award.
5. An award shall be signed by the arbitrator and it shall contain the date on which it was made and the place of arbitration in accordance with article 16 paragraph 1. Where there are three arbitrators and one of them fails to sign, the award shall state the reason for the absence of the signature.
6. Copies of the award signed by the arbitrators shall be communicated to the Center which shall communicate an original of the award to each party and to each arbitrator.
7. If the arbitration law of the country where the award is made requires that the award be filed or registered, the Center shall comply with this requirement within the period of time required by law.
8. The Center may publish the award only with the consent of the parties or in sanitized form, that is, with such deletions or modifications that are necessary to mask the identity of the parties, and after having given the parties thirty days in which to comment upon the sanitized version.

Article 33

Applicable Law, Amiable Compositeur

1. The arbitral tribunal shall apply the law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.
2. The arbitral tribunal shall decide as *amiable compositeur* or *ex aequo et bono* only if the parties have expressly authorized the arbitral tribunal to do so and if the law applicable to the arbitral procedure permits such arbitration.
3. In all cases, the arbitral tribunal shall decide in accordance with the terms of the undertaking and shall take into account generally accepted international rules, usages and practices.
4. Monetary amounts in the award may be expressed in any currency. The arbitral tribunal may award simple or compound interest to be paid by a party on any sum awarded against that party. It shall be free to determine the interest at such rates as it considers to be appropriate, without being bound by legal rates of interest, and shall be free to determine the period for which the interest shall be paid. The arbitral tribunal may not award exemplary or punitive damages.

Article 34

Settlement or Other Grounds for Termination

1. If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral proceedings or,

if requested by both parties and accepted by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.

2. If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 1, the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal shall have the power to issue such an order unless a party raises justifiable grounds for objection.
3. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the arbitral tribunal to the Center which shall communicate an original of the award to each party and to each arbitrator. Where an arbitral award on agreed terms is made, the provisions of article 32, paragraphs 2, 4, 5, 7 and 8, shall apply.

Article 35

Interpretation of the Award

1. Within thirty days after the receipt of the award, either party, with notice to the other party, may request that the arbitral tribunal give an interpretation of a specific point or part of the award.
2. The interpretation shall be given in writing within thirty days after the receipt of the request. The interpretation shall form part of the award and the provisions of article 32, paragraphs 2 to 7, shall apply.

Article 36

Correction of the Award

1. Within thirty days after the receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature. The arbitral tribunal may within thirty days after the communication of the award make such corrections on its own initiative.
2. Such corrections shall be in writing, and the provisions of article 32, paragraphs 2 to 7, shall apply.

Article 37

Additional Award

1. Within thirty days after the receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.
2. If the arbitral tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearing or evidence, it shall complete its award within sixty days after the receipt of the request.
3. When an additional award is made, the provisions of article 32, paragraphs 2 to 7, shall apply.

Article 38

Costs

The arbitral tribunal shall state the costs of arbitration in its award. The term “costs” includes only:

- a) The fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the Center in accordance with article 39;
- b) The travel and other expenses incurred by the arbitrators;
- c) The costs of expert advice and of other assistance required by the arbitral tribunal;
- d) The travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;
- e) The costs for legal representation and assistance of the successful party if such costs were claimed during the arbitral proceedings, and only to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;
- f) Any fees and expenses of the Center in accordance with its schedule of fees.

Article 39

Fees of the Arbitral Tribunal

The fees of the arbitral tribunal shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject-matter, the time spent by the arbitrators and any other relevant circumstances of the case.

Article 40

Apportionment of Costs

1. Except as provided in paragraph 2, the costs of arbitration shall in principle be born by the unsuccessful party. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.
2. With respect to the costs of legal representation and assistance referred to in article 38, paragraph (e), the arbitral tribunal, taking into account the circumstances of the case, shall be free to determine which party shall bear such costs or may apportion such costs between the parties if it determines that apportionment is reasonable.
3. When the arbitral tribunal issues an order for the termination of the arbitral proceedings or makes an award on agreed terms, it shall fix the costs of arbitration referred to in article 38 and article 39 in the text of that order or award.
4. No additional fees may be charged by an arbitral tribunal for interpretation or correction or completion of its award under articles 35 to 37.

Article 41

Deposit of Costs

1. The Center may request each party to deposit an equal amount as an advance for the costs referred to in article 38, paragraphs (a), (b), (c), (d) and (f).
2. During the course of the arbitral proceedings the Center may request supplementary deposits from the parties.
3. If the required deposits are not paid in full within twenty-one days after the receipt of the request, the Center shall so inform the parties in order that one or another of them may make the required payment. If such payment is not

made, the Center may order the suspension or termination of the arbitral proceedings.

4. After the proceedings are terminated or the award has been made, the Center shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

Article 42

Exclusion of Liability

Except in respect of deliberate wrongdoing, the members of the arbitral tribunal and the Center shall not be liable to a party for any act or omission in connection with the arbitration including the failure to act in response to a request for interim relief.

Article 43

Waiver of Defamation

The parties and, by acceptance of appointment, the members of the arbitral tribunal agree that any statements or comments, whether written or oral, made or used by them or the respective representatives of the parties in preparation for or in the course of the arbitration shall not be relied upon to found or maintain any action for defamation, libel, slander or any related complaint, and this article may be pleaded as a bar to any such action.

INTERNATIONAL STANDARD BANKING PRACTICE FOR THE EXAMINATION OF DOCUMENTS UNDER DOCUMENTARY CREDITS (ISBP)

Published in January 2003 by ICC PUBLISHING S.A.

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INTRODUCTION

At its May 2000 meeting the Commission on Banking Technique and Practice of the International Chamber of Commerce (ICC Banking Commission) established a task force to document international standard banking practice for the examination of documents presented under documentary credits issued subject to the *Uniform Customs and Practice for Documentary Credits*, the International Chamber of Commerce's Publication No. 500 (UCP).

The international standard banking practices documented in this publication are consistent with the UCP and the Opinions and Decisions of the ICC Banking Commission. This document does not amend UCP. It explains how the practices articulated in the UCP are to be applied by documentary practitioners. It is, of course, recognized that the law in some countries may compel a different practice than that stated here.

No single publication can anticipate all the terms or the documents that may be used in connection with documentary credits or their interpretation under the UCP and the standard practice it reflects.

However, the task force preparing this publication has endeavoured to cover terms commonly seen on a day-to-day basis and the documents most often presented under documentary credits.

It should be noted that any term in a documentary credit which modifies or affects the applicability of a provision of the UCP may also have an impact on international standard banking practice.

Therefore, in considering the practices described in this publication, parties must take into account any term in a documentary credit that expressly excludes or modifies a provision in an article of the UCP. This principle is implicit throughout this publication, whether or not stated, but it is sometimes expressly repeated for purposes of emphasis or for illustration. Where examples are given, these are solely for the purpose of illustration and are not exhaustive.

This publication reflects international standard banking practice for all parties to a documentary credit. Since applicants' obligations, rights, and remedies depend upon their undertaking with the issuing bank, the performance of the underlying transaction, and the timeliness of any objection under applicable law and practice, applicants should not assume that they may rely on these provisions in order to excuse their obligations to reimburse the issuing bank.

The incorporation of this publication into the terms of a documentary credit should be discouraged, as the requirement to follow agreed practices is implicit in the UCP.

Because this publication reflects current documentary credit practice as provided by ICC national committees and individual ICC members, it will be of considerable use in the formulation of any future revision of the UCP.

PRELIMINARY CONSIDERATIONS

The application and issuance of the credit

1. The terms of a credit are independent of the underlying transaction even if a credit expressly refers to that transaction. To avoid unnecessary costs, delays, and disputes in the examination of documents, however, the applicant and beneficiary should carefully consider which documents should be required, by whom they should be produced, and the time frame for presentation.
2. The applicant bears the risk of any ambiguity in its instructions to issue or amend a credit. Unless expressly stated otherwise, a request to issue or amend a credit authorizes an issuer to supplement or develop the terms in a manner necessary or desirable to permit the use of the credit.
3. The applicant should be aware that the UCP contains Articles such as Articles 13, 20, 21, 23, 24, 26, 27, 28, 39, 40, 46 and 47 that define terms in a manner that may produce unexpected results unless the applicant fully acquaints itself with these provisions. For example, a credit requiring presentation of a marine bill of lading and containing a prohibition against transshipment will, in most cases, have to exclude UCP sub-Article 23(d) to make the prohibition against transshipment effective.
4. A credit should not require presentation of documents that are to be issued and/or countersigned by the applicant. If a credit is issued including such terms, the beneficiary must either seek amendment or comply with them and bear the risk of failure to do so.
5. Many of the problems that arise at the examination stage could be avoided or resolved by careful attention to detail in the underlying transaction, the credit application, and issuance of the credit as discussed.

GENERAL PRINCIPLES

Abbreviations

6. The use of generally accepted abbreviations, for example "Ltd" instead of "Limited", "Int'l" instead of "International", "Co." instead of "Company", "kgs" or "kos" instead of "kilos", "Ind." instead of "Industry", "mfr" instead of "manufacturer" or "mt" instead of "metric tons" – or vice versa – does not make a document discrepant.
7. Virgules (slash marks "/") may have different meanings, and unless apparent in the context used, should not be used as a substitute for a word.

Certifications and declarations

8. A certification, declaration or the like may either be a separate document or contained within another document as required by the credit. If the certification or declaration appears in another document which is signed and dated, any certification or declaration appearing on that document does not require a separate signature or date if the certification or declaration appears to have been given by the same entity that issued and signed the document.

Corrections and alterations

9. Corrections and alterations of information or data in documents, other than documents created by the beneficiary, must appear to be authenticated by the party who issued the document or by a party authorized by the issuer to do so. Corrections and alterations in documents which have been legalized, visaed, or the like, must appear

to be authenticated by the party who legalized, visaed, etc., the document. The authentication must show by whom the authentication has been made and include that party's signature or initials. If the authentication appears to have been made by a party other than the issuer of the document, the authentication must clearly show in which capacity that party has authenticated the correction or alteration.

10. Corrections and alterations in documents issued by the beneficiary itself, except drafts, which have not been legalized, visaed or the like, need not be authenticated. See also "Drafts and calculation of maturity date".
11. The use of multiple type styles or font sizes or handwriting in the same document does not, by itself, signify a correction or alteration.
12. Where a document contains more than one correction or alteration, either each correction must be authenticated separately or one authentication must be linked to all corrections in an appropriate way. For example, if the document shows three corrections numbered 1, 2 and 3, one statement such as "Correction numbers 1, 2 and 3 above authorized by XXX" or similar, will satisfy the requirement for authentication.

Dates

13. Drafts, transport documents and insurance documents must be dated even if a credit does not expressly so require. A requirement that a document, other than those mentioned above, be dated, may be satisfied by reference in the document to the date of another document forming part of the same presentation (e.g., where a shipping certificate is issued which states "date as per bill of lading number xxx" or similar terms). Although it is expected that a required certificate or declaration in a separate document be dated, its compliance will depend on the type of certification or declaration that has been requested, its required wording, and the wording that appears within it. Whether other documents require dating will depend on the nature and content of the document in question.
14. Any document, including a certificate of analysis, inspection certificate and pre-shipment inspection certificate, may be dated after the date of shipment. However, if a credit requires a document evidencing a pre-shipment event (e.g., pre-shipment inspection certificate), the document must, either by its title or content, indicate that the event (e.g., inspection) took place prior to or on the date of shipment. A requirement for an "inspection certificate" does not constitute a requirement to evidence a pre-shipment event. Documents must not indicate that they were issued after the date they are presented.
15. A document indicating a date of preparation and a later date of signing is deemed to be issued on the date of signing.
16. The rule for the latest date for presentation in sub-Article 43(a) of UCP applies only to presentations that are required to contain one or more original transport documents. Transport documents are those covered by UCP Articles 23-29. In any event, documents must be presented not later than the expiry date of the credit.
17. Phrases often used to signify time on either side of a date or event:
 - a) "within 2 days after" indicates a period from the date of the event until two days after the event.

b) "not later than 2 days after" does not indicate a period, only a latest date. If an advice must not be dated prior to a specific date, the credit must so state.

c) "at least 2 days before" indicates that something must take place not later than two days before an event. There is no limit as to how early it may take place.

d) "within 2 days of" indicates a period two days prior to the event until two days after the event.

18. The term "within" when used in connection with a date excludes that date in the calculation of the period.

19. Dates may be expressed in different formats, e.g., the 12th of November 2003 could be expressed as 12 Nov 03, 12Nov03, 12.11.2003, 12.11.03, 2003.11.12, 11.12.03, 121103, etc.

Provided that the date intended can be determined from the document or from other documents included in the presentation, any of these formats are acceptable. To avoid confusion it is recommended that the name of the month should be used instead of the number.

Documents for which the UCP Transport Articles do not apply

20. Some documents commonly used in relation to the transportation of goods, e.g., Delivery Order, Forwarder's Certificate of Receipt, Forwarder's Certificate of Shipment, Forwarder's Certificate of Transport, Forwarder's Cargo Receipt and Mate's Receipt do not reflect a contract of carriage and are not transport documents as defined in UCP Articles 23 through 29.

As such, UCP Article 43 would not apply to these documents.

Therefore, these documents will be examined in the same manner as other documents for which there are no specific provisions in the UCP, i.e., under UCP Article 21. In any event, documents must be presented not later than the expiry date of the credit.

21. Copies of transport documents are not transport documents for the purpose of UCP Articles 23-29 and 43. The UCP Transport Articles apply where there are original transport documents presented. Where a credit allows for the presentation of a copy(ies) rather than an original(s), the credit must explicitly state the details to be shown. Where copies (nonnegotiable) are presented, they need not evidence signature, dates, etc.

Expressions not defined in UCP

22. Expressions such as "shipping documents", "stale documents acceptable", "third party documents acceptable", and "exporting country" should not be used as they are not defined in UCP. If used in a credit, their meaning should be made apparent. If not, they have the following meaning under international standard banking practice:

a) "shipping documents" – all documents (not only transport documents), except drafts, required by the credit.

b) "stale documents acceptable" – documents presented later than 21 days after the date of shipment are acceptable as long as they are presented within the validity of the credit.

- c) “third party documents acceptable” – all documents, excluding drafts but including invoices, may be issued by a party other than the beneficiary. If the issuing bank’s intent is that the transport document(s) may show a shipper other than the beneficiary, the clause is not necessary because it is already permitted by UCP sub-Article 31(iii).
 - d) “exporting country” – the country where the beneficiary is domiciled, and/or the country of origin of the goods, and/or the country of receipt by the carrier and/or the country from which shipment or dispatch is made.
23. Words and phrases such as “prompt”, “immediately”, “as soon as possible”, and the like should not be used in any context. If they are used banks will disregard them.

Inconsistency in the documents

24. Documents presented under a credit must not appear to be inconsistent with each other. The requirement is not that the data content be identical, merely that the documents not be inconsistent.

Issuer of documents

25. If a credit indicates that a document is to be issued by a named person or entity, this condition is satisfied if the document appears to be issued by the named person or entity.

It may appear to be issued by a named person or entity by use of its letterhead, or, if there is no letterhead, the document appears to have been completed and/or signed by, or on behalf of, the named person or entity.

Language

26. Under international standard banking practice, it is expected that documents issued by the beneficiary will be in the language of the credit. When a credit states that documents in two or more languages are acceptable, a nominated bank may, in its advice of the credit, limit the number of acceptable languages as a condition of its engagement in the credit or confirmation.

Mathematical calculations

27. Detailed mathematical calculations in documents will not be checked by banks. Banks are only obliged to check total values against the credit and other required documents.

Misspellings or typing errors

28. Misspellings or typing errors that do not affect the meaning of a word or the sentence in which it occurs, do not make a document discrepant. For example, a description of the merchandise as “mashine” instead of “machine”, “fountan pen” instead of “fountain pen” or “modle” instead of “model” would not make the document discrepant. However, a description as “model 123” instead of “model 321” would not be regarded as a typing error and would constitute a discrepancy.

Multiple pages and attachments or riders

29. Unless the credit or a document provides otherwise, pages which are physically bound together, sequentially numbered or contain internal cross references, however named or entitled, are to be examined as one document, even if some of the pages are regarded as an attachment. Where a document consists of more than one page, it must be possible to determine that the pages are part of the same document.
30. If a signature and/or endorsement is required to be on a document consisting of more than one page, the signature

is normally placed on the first or last page of the document, but unless the credit or the document itself indicates where a signature or endorsement is to appear, the signature or endorsement may appear anywhere on the document.

Originals and copies

31. Documents issued in more than one original may be marked “Original”, “Duplicate”, “Triplicate”, “First Original”, “Second Original”, etc. None of these markings will disqualify a document as an original.
32. Each required document must be presented in at least one original, unless the credit allows for presentation of documents as copies. The number of originals to be presented must be at least the number required by the credit, the UCP, or, where the document itself states how many originals have been issued, the number stated on the document.
33. It can sometimes be difficult to determine from the wording of a credit whether it requires an original or a copy, and to determine whether that requirement is satisfied by an original or a copy. For example, where the credit requires:
- a) “Invoice”, “One Invoice” or “Invoice in 1 copy”, it will be understood to be a requirement for an original invoice.
 - b) “Invoice in 4 copies”, it will be satisfied by the presentation of at least one original and the remaining number as copies of an invoice.
 - c) “One copy of Invoice”, it will be satisfied by presentation of a copy of an invoice. However, it is standard banking practice to accept an original instead of a copy in this construction.
34. Where an original would not be accepted in lieu of a copy, the credit must prohibit an original, e.g., “photocopy of invoice – original document not acceptable in lieu of photocopy”, or the like.
35. The ICC Banking Commission Policy Statement, document 470/871(Rev), titled “The determination of an “Original” document in the context of UCP sub-Article 20(b)” is recommended for further guidance on originals versus copies.

Shipping marks

36. The purpose of a shipping mark is to enable identification of a box, bag or package. If a credit specifies the details of a shipping mark, the document(s) mentioning the marks must show these details, but additional information is acceptable provided it is not inconsistent with the credit terms.
37. Shipping marks contained in some documents often include information in excess of what would normally be considered “shipping marks”, and could include information such as the type of goods, warnings as to the handling of fragile goods, net and/or gross weight of the goods, etc. The fact that some documents show such additional information, while others do not, is not a discrepancy.
38. Transport documents covering containerized goods will sometimes only show a container number under the heading “Shipping marks”. Other documents that show a detailed marking will not be considered to be inconsistent for that reason.

Signatures

39. Even if not stated in the credit, drafts, certificates and declarations by their nature require a signature. Transport documents and insurance documents must be signed in accordance with the provisions of the UCP.

40. The fact that a document has a box or space for a signature does not necessarily mean that such box or space must be completed with a signature. For example, banks do not require a signature in the area titled "Signature of shipper or their agent", or similar phrases, commonly found on transport documents such as air waybills or road transport documents. If a document on its face requires a signature for its validity (e.g., "This document is not valid unless signed", or similar terms), it must be signed.

41. A signature need not be handwritten. Facsimile signatures, perforated signatures, stamps, symbols (such as chops) or any electronic or mechanical means of authentication are sufficient. However, a photocopy of a signed document does not qualify as a signed original document, nor does a signed document transmitted through a fax-machine, absent an original signature. A requirement for a document to be "signed and stamped", or a similar requirement, is also fulfilled by a signature and the name of the party typed, or stamped, or handwritten, etc.

42. A signature on a company's letterhead paper will be taken to be the signature of that company, unless otherwise stated.

The company's name need not be repeated next to the signature.

Title of documents and combined documents

43. Documents may be titled as called for in the credit, bear a similar title, or be untitled. For example, a credit requirement for a "Packing List" may also be satisfied by a document containing packing details whether titled "Packing Note", "Packing and Weight List", etc., or an untitled document. The content of a document must appear to fulfill the function of the required document.

44. Documents listed in a credit should be presented as separate documents. If a credit requires a packing list and a weight list, such requirement will be satisfied by presentation of two separate documents, or by presentation of two original copies of a combined packing and weight list, provided such document states both packing and weight details.

DRAFTS AND CALCULATION OF MATURITY DATE

Tenor

45. The tenor must be in accordance with the terms of the credit.

a) If a draft is drawn at a tenor other than sight, or other than a certain period after sight, it must be possible to establish the maturity date from the data in the draft itself.

b) As an example of where it is possible to establish a maturity date from the data in the draft, if a credit calls for drafts at a tenor 60 days after the bill of lading date, where the date of the bill of lading is 12 May 2002, the tenor could be indicated on the draft in one of the following ways:

i. "60 days after bill of lading date 12 May 2002", or

ii. "60 days after 12 May 2002", or

iii. "60 days after bill of lading date" and elsewhere on the face of the draft state "bill of lading date 12 May 2002",

or

iv. "60 days date" on a draft dated the same day as the date of the bill of lading, or

v. "11 July 2002", i.e., 60 days after the bill of lading date.

c) If the tenor refers to xxx days after the bill of lading date, the on board date is deemed to be the bill of lading date even if the on board date is prior to or later than the date of issuance of the bill of lading.

d) The UCP provides no guidance where the words "from" and "after" are used to determine maturity dates of drafts. Reference to "from" and "after" in the UCP refers solely to date terminology for periods of shipment. Where the word "from" is used to establish the maturity date, international standard banking practice would exclude the date mentioned, unless the credit specifically provides that "from" is considered to include the date mentioned. Therefore, for the purposes of determining the maturity date of a time draft, the words "from" and "after" have the same effect. Calculation of the maturity commences the day following the date of the document, shipment, or other event, i.e., 10 days after or from March 1 is March 11.

e) If a bill of lading showing more than one on board notation is presented under a credit which requires drafts to be drawn, for example, at 60 days after or from bill of lading date, and the goods according to both or all on board notations were shipped from ports within a permitted geographical area or region, the earliest of these on board dates will be used for calculation of the maturity date.

Example: the credit requires shipment from European port and the bill of lading evidences on board vessel "A" from Dublin August 16, and on board vessel "B" from Rotterdam August 18. The draft should reflect 60 days from the earliest on board date in a European port, i.e., August 16.

f) If a credit requires drafts to be drawn, for example, at 60 days after or from bill of lading date, and more than one set of bills of lading are presented under one draft, the date of the last bill of lading will be used for the calculation of the maturity date.

46. While the examples refer to bill of lading dates, the same principles apply to all transport documents.

Maturity date

47. If a draft states a maturity date by using an actual date, the date must have been calculated in accordance with the requirements of the credit.

48. For drafts drawn "at XXX days sight", the maturity date is established as follows:

a) in the case of complying documents, or in the case of non-complying documents where the drawee bank has not provided a refusal of documents, the maturity date will be XXX days after the date of receipt of documents by the drawee bank.

- b) in the case of non-complying documents where the drawee bank has provided a notice of refusal of documents and subsequent approval, at the latest XXX days after the date of acceptance of the draft by the drawee bank. The date of acceptance of the draft must be no later than the date of approval of the documents.
49. In all cases the drawee bank must advise the maturity date to the presenter. The calculation of tenor and maturity dates, as shown above, would also apply to credits designated as being available by deferred payment, i.e., where there is no requirement for a draft to be presented by the beneficiary.

Banking days, grace days, delays in remittance

50. Payment must be available in immediately available funds on the due date at the place where the draft or documents are payable, provided such due date is a banking day in that place. If the due date is a non-banking day, payment will be due on the first banking day following the due date unless the credit states otherwise. Delays in the remittance of funds, such as grace days, the time it takes to remit funds, etc., must not be in addition to the stated or agreed due date as defined by the draft or documents.

Endorsement

51. The draft must be endorsed, if necessary.

Amounts

52. The amount in words must accurately reflect the amount in figures if both are shown, and indicate the currency, as stated in the credit.
53. The amount must agree with that of the invoice, unless otherwise stated in the credit or as a result of UCP sub-Article 37(b).

How the draft is drawn

54. The draft must be drawn on the party stated in the credit.
55. The draft must be drawn by the beneficiary.

Drafts on the applicant

56. Credits should not be issued requiring that drafts be drawn on the applicant. If a credit calls for drafts to be drawn on the applicant, banks must consider such drafts as additional documents to be reviewed in accordance with UCP Article 21.

Corrections and alterations

57. Corrections and alterations on a draft, if any, must appear to have been authenticated by the drawer.
58. In some countries draft(s) showing corrections and alterations are not acceptable even with the drawer's authentication. Issuing banks in such countries should make a statement in the credit to the effect that no correction or alteration must appear in the draft(s).

INVOICES

Definition of invoice

59. A credit requiring an "invoice" without further definition will be satisfied by any type of invoice presented (commercial invoice, customs invoice, tax invoice, final invoice, consular invoice, etc.). However, invoices identified as "provisional", "pro-forma", or the like are not acceptable unless specifically authorized in the credit. When a credit requires presentation of a commercial invoice, a document titled "invoice" will be acceptable.

Name and address

60. An invoice must appear on its face to have been issued by the beneficiary named in the credit. Telex or fax numbers, etc., forming part of the address, need not be present, or, if stated, need not be identical to that in the credit.
61. An invoice must be made out in the name of the applicant. Telex or fax numbers, etc., forming part of the address, need not be present, or, if stated, need not be identical to that in the credit.

Description of the goods and other general issues related to invoices

62. The description of the goods in the invoice must correspond with the description in the credit. There is no requirement for a mirror image. For example, details of the goods may be stated in a number of areas within the invoice which, when collated together, represents a description of the goods corresponding to that in the credit.
63. The goods description in an invoice must reflect what goods have been actually shipped. For example, where there are two types of goods shown in the credit, such as 10 trucks and 5 tractors, an invoice that reflects only shipment of 4 trucks would be acceptable provided the credit does not prohibit partial shipment. An invoice showing the entire goods description as stated in the credit, then stating what has actually been shipped, is also acceptable.
64. An invoice must evidence the value of the goods shipped. Unit price(s), if any, and currency shown in the invoice must agree with that shown in the credit. The invoice must show any discounts or deductions required in the credit. The invoice may also show a deduction covering advance payment, discount, etc., not stated in the credit.
65. If a trade term is part of the goods description in the credit, or stated in connection with the amount, the invoice must state the trade term specified, and if the description provides the source of the trade term, the same source must be identified (e.g., a credit term "CIF Singapore Incoterms 2000" would not be satisfied by "CIF Singapore Incoterms", etc.). Charges and costs must be included within the value shown against the stated trade term in the credit and invoice. Any charges and costs shown beyond this value are not allowed.
66. Unless required by the credit, an invoice need not be signed or dated.
67. The quantity of merchandise, weights, and measurements shown on the invoice must be not inconsistent with the same quantities appearing on other documents.
68. An invoice must not show:
- a) over-shipment (except as provided in UCP sub-Article 39(b)), or
 - b) merchandise not called for in the credit (including samples, advertising materials, etc.) even if stated to be free of charge.
69. The quantity of the goods required in the credit may vary within a tolerance of +/- 5%. This does not apply if a credit stipulates that the quantity must not be exceeded or reduced, or if a credit stipulates the quantity in terms of a stated number of packing units or individual items. A variance of up to +5% in the goods quantity does not allow the amount of the drawing to exceed the amount of the credit.

70. If partial shipments are prohibited, a tolerance of 5% less in the invoice amount is acceptable, provided that the quantity is shipped in full and that any unit price, if stated in the credit, has not been reduced. If no quantity is stated in the credit, the invoice will be considered to cover the full quantity.
71. The required number of originals and copies must be presented.
72. If a credit calls for instalment shipments, each shipment must be in accordance with the instalment schedule.

OCEAN/MARINE BILLS OF LADING (COVERING PORT-TO-PORT SHIPMENT)

Application of UCP Article 23

73. If a credit requires presentation of a transport document covering a port-to-port shipment, UCP Article 23 is applicable.
74. If a credit requires presentation of a “marine” or “ocean” transport document, UCP Article 23 applies. A transport document need not use the term “marine” or “ocean” in order to comply with UCP Article 23 provided that it covers a port-to-port shipment.

Full set of originals

75. A UCP Article 23 transport document must indicate the number of originals that have been issued. Transport documents marked “First Original”, “Second Original”, “Third Original”, “Original”, “Duplicate”, “Triplicate”, etc., or similar expressions are all originals. Bills of lading need not be marked “original” to be acceptable as an original bill of lading. See section 3.1 of ICC Publication 470/871 Rev., 29 July 1999, “The determination of an “Original” document in the context of UCP 500 sub-Article 20(b)”.

Signing of bills of lading

76. Original bills of lading must bear a signature in the form described in UCP sub-Article 20(b) and the name of the carrier must appear on the face of the bill of lading, identified as the carrier.
- If an agent signs a bill of lading on behalf of a carrier, the agent must be identified as agent, and must identify the carrier on whose behalf it is signing, unless the carrier has been identified elsewhere on the face of the bill of lading.
 - If the master (captain) signs the bill of lading, the signature of the master (captain) must be identified as “master” (“captain”). In this event, the name of the master (captain) need not be stated.
 - If an agent signs the bill of lading on behalf of the master (captain), the agent must be identified as agent and the name of the master (captain) on whose behalf it is signing must be stated.
77. If a credit states “Freight Forwarder’s Bill of Lading is acceptable” or uses a similar phrase, then the bill of lading may be signed by a freight forwarder in the capacity of a freight forwarder, without the need to identify itself as carrier or agent for the named carrier. It is not necessary to show the name of the carrier.

On board notations

78. If a pre-printed “Shipped on board” bill of lading is presented, its issuance date will be deemed to be the date

of shipment unless it bears a separate dated on board notation, in which event the date of the on board notation will be deemed to be the date of shipment whether or not the on board date is before or after the issuance date of the bill of lading.

79. “Shipped in apparent good order”, “Laden on board”, “clean on board” or other phrases incorporating words such as “shipped” or “on board” have the same effect as “Shipped on board”.

Ports of loading and ports of discharge

80. While the named port of loading, as required by the credit, should appear in the port of loading field within the bill of lading, it may instead be stated in the field headed “Place of receipt” or the like, if it is clear that the goods were transported from that place of receipt by vessel, and provided there is an on board notation evidencing that the goods were loaded on that vessel at the port stated under “Place of receipt” or like term.
81. While the named port of discharge, as required by the credit, should appear in the port of discharge field within the bill of lading, it may be stated in the field headed “Place of final destination” or the like if it is clear that the goods were to be transported to that place of final destination by vessel, and provided there is a notation evidencing that the port of discharge is that stated under “Place of final destination” or like term.
82. If a Container Yard (CY) or Container Freight Station (CFS) is stated as the place of receipt and that place is the same as the stated port of loading (e.g., Place of Receipt: Hong Kong CY; Port of Loading: Hong Kong), these places are deemed to be the same, and therefore the specification of the port of loading and the name of the vessel in the “on board” notation are not necessary.
83. If a credit gives a geographical area or range of ports of loading and/or discharge (e.g., “Any European Port”), the bill of lading must indicate the actual port of loading and/or discharge, which must be within the geographical area or range quoted.

Consignee, order party, shipper and endorsement, notify party

84. If a credit requires a bill of lading to show that the goods are consigned to a named party, e.g., “consigned to Bank X” (a “straight” consignment), rather than “to order” or “to order of Bank X”, the bill of lading must not contain words such as “to order” or “to order of” that precede the name of that named party, whether typed or pre-printed. Likewise, if a credit requires the goods to be consigned “to order” or “to order of” a named party, the bill of lading must not show that the goods are consigned straight to the named party.
85. If a bill of lading is issued to order, or to order of the shipper, it must be endorsed by the shipper. An endorsement indicating that it is made for or on behalf of the shipper is acceptable.
86. If a credit does not state a notify party(ies), the respective field on the bill of lading may be left blank or completed in any manner.

Transshipment and partial shipment

87. Transshipment is the unloading and reloading of goods from one vessel to another during the course of ocean carriage from the port of loading to the port of discharge

stipulated in the credit. If it does not occur between these two ports, unloading and reloading is not considered to be transshipment.

88. Although transshipment may be prohibited, UCP sub-Article 23(d) nonetheless permits transshipment under certain circumstances.

If, however, a credit prohibits transshipment and excludes UCP sub-Articles 23(d)(i) and (ii), a bill of lading that indicates on its face that transshipment will or may take place will be considered discrepant.

89. If a credit prohibits partial shipments, and more than one set of original bills of lading are presented covering shipment from one or more ports of loading (as specifically allowed, or within a given range, in the credit), such documents are acceptable provided that they cover the shipment of goods on the same vessel and same journey and are destined for the same port of discharge. In the event that more than one set of bills of lading are presented, and incorporate different dates of shipment, the latest of these dates of shipment will be taken for the calculation of any presentation period and must fall on or before the latest shipment date specified in the credit. Shipment on more than one vessel is a partial shipment, even if the vessels leave on the same day for the same destination.

Clean bills of lading

90. Clauses or notations on bills of lading which expressly declare a defective condition of the goods and/or packaging are not acceptable. Clauses or notations which do not expressly declare a defective condition of the goods and/or packaging (e.g., “packaging may not be sufficient for the sea journey”) do not constitute a discrepancy. A statement that the packaging “is not sufficient for the sea journey” would not be acceptable.
91. The word “clean” need not appear on a bill of lading even though the credit may require a “clean on board bill of lading” or one marked “clean on board”.
92. If the word “clean” appears on a bill of lading and has been deleted, the bill of lading will not be deemed to be clausal or unclean unless it specifically bears a clause or notation declaring that the goods or packaging are defective.

Goods description

93. A goods description in the bill of lading may be shown in general terms not inconsistent with that stated in the credit.

Corrections and alterations

94. Corrections and alterations on a bill of lading must be authenticated. Such authentication must appear to have been made by the carrier, master (captain), or any of their agents (who may be different from the agent that may have issued or signed it), provided they are identified as an agent of the carrier or the master (captain).
95. Non-negotiable copies of bills of lading do not need to include any signature on, or authentication of any alterations or corrections that may have been made on the original.

Freight and additional costs

96. If a credit requires that a bill of lading show that freight has been paid or is payable at destination, the bill of lading must be marked accordingly.
97. Applicants and issuing banks should be specific in stating

the requirements of documents to show whether freight is to be prepaid or collected.

98. If a credit states that costs additional to freight are not acceptable, a bill of lading must not indicate that costs additional to the freight have been or will be incurred. Such indication may be by express reference to additional costs or by the use of shipment terms which refer to costs associated with the loading or unloading of goods, such as Free In (FI), Free Out (FO), Free In and Out (FIO) and Free In and Out Stowed (FIOS). A reference in the transport document to costs which may be levied as a result of a delay in unloading the goods or after the goods have been unloaded, e.g., costs covering the late return of containers, is not considered to be an indication of additional costs in this context.

Goods covered by more than one bill of lading

99. If a bill of lading states that the goods in a container are covered by that bill of lading plus one or more other bills of lading, and the bill of lading states that all bills of lading must be surrendered, or words of similar effect, this means that all bills of lading related to that container must be presented in order for the container to be released. Such a bill of lading is not acceptable unless all the bills of lading form part of the same presentation under the same credit.

CHARTER PARTY BILLS OF LADING

Application of UCP Article 25

100. If a credit requires presentation of a charter party bill of lading covering a port-to-port shipment, UCP Article 25 is applicable.

A transport document containing any indication that it is subject to a charter party is a charter party bill of lading under UCP Article 25.

101. If a credit requires presentation of a charter party bill of lading, then a marine transport document presented containing an indication that it is subject to a charter party must fulfill the requirements of UCP Article 25.

Full set of originals

102. A UCP Article 25 transport document must indicate the number of originals that have been issued. Transport documents marked “First Original”, “Second Original”, “Third Original”, “Original”, “Duplicate”, “Triplicate”, etc., or similar expressions are all originals. Charter party bills of lading need not be marked “original” to be acceptable under a credit. See section 3.1 of ICC Publication 470/871 Rev. 29, July 1999, “The determination of an ‘Original’ document in the context of UCP 500 sub-Article 20(b)”.

Signing of charter party bills of lading

103. Original charter party bills of lading must bear a signature in the form described in UCP sub-Article 20(b).
- a) If the master (captain) or owner signs the charter party bill of lading, the signature of the master (captain) or owner must be identified as “master” (“captain”) or “owner”.
- b) If an agent signs the charter party bill of lading on behalf of the master (captain) or owner, the agent must be identified as agent and the name of the master (captain) or owner on whose behalf it is signing must be stated.

On board notations

104. If a pre-printed “Shipped on board” charter party bill of lading is presented, its issuance date will be deemed to be the date of shipment unless it bears an on board notation, in which event the date of the on board notation will be deemed to be the date of shipment whether or not the on board date is before or after the issuance date of the document.
105. “Shipped in apparent good order”, “Laden on board”, “clean on board” or other phrases incorporating words such as “shipped” or “on board” have the same effect as “shipped on board”.

Ports of loading and ports of discharge

106. If a credit gives a geographical area or range of ports of loading and/or discharge (e.g., “Any European Port”), the charter party bill of lading must indicate the actual port(s) of loading, which must be within the geographical area or range indicated but may show the geographical area or range of ports as the port of discharge.

Consignee, order party, shipper and endorsement, notify party

107. If a credit requires a charter party bill of lading to show that the goods are consigned to a named party e.g., “consigned to Bank X” (a “straight” consignment), rather than “to order” or “to order of Bank X”, the charter party bill of lading must not contain words such as “to order” or “to order of” that precede the name of that named party, whether typed or pre-printed.
- Likewise, if a credit requires the goods to be consigned “to order” or “to order of” a named party, the bill of lading must not show that the goods are consigned straight to the named party.
108. If a charter party bill of lading is issued to order, or to order of the shipper, it must be endorsed by the shipper. An endorsement indicating that it is made for or on behalf of the shipper is acceptable.
109. If a credit does not state a notify party(ies), the respective field on the charter party bill of lading may be left blank or completed in any manner.

Partial shipment

110. If a credit prohibits partial shipments, and more than one set of original charter party bills of lading are presented covering shipment from one or more ports of loading (as specifically allowed, or within a given range, in the credit), such documents are acceptable, provided that they cover the shipment of goods on the same vessel and same journey and are destined for the same port of discharge, range of ports or geographical area. In the event that more than one set of charter party bills of lading are presented, and incorporate different dates of shipment, the latest of these dates of shipment will be taken for the calculation of any presentation period and must fall on or before the latest shipment date specified in the credit.
- Shipment on more than one vessel is a partial shipment, even if the vessels leave on the same day for the same destination.

Clean charter party bills of lading

111. Clauses or notations on charter party bills of lading which expressly declare a defective condition of the goods and/or packaging are not acceptable. Clauses or notations that do not expressly declare a defective condition of the goods

and/or packaging (e.g., “packaging may not be sufficient for the sea journey”) do not constitute a discrepancy. A statement that the packaging “is not sufficient for the sea journey” would not be acceptable.

112. The word “clean” need not appear on a charter party bill of lading even though the credit may require a “clean on board charter party bill of lading” or one marked “clean on board”.
113. If the word “clean” appears on a charter party bill of lading and has been deleted, the charter party bill of lading will not be deemed to be claused or unclean unless it specifically bears a clause or notation declaring that the goods or packaging are defective.

Goods description

114. A goods description in charter party bills of lading may be shown in general terms not inconsistent with that stated in the credit.

Corrections and alterations

115. Corrections and alterations on charter party bills of lading must be authenticated. Such authentication must appear to have been made by the owner, master (captain), or any of their agents (who may be different from the agent that may have issued or signed it), provided they are identified as an agent of the owner or the master (captain).
116. Non-negotiable copies of charter party bills of lading do not need to include any signature on, or authentication of any alterations or corrections that may have been made on the original.

Freight and additional costs

117. If a credit requires that a charter party bill of lading show that freight has been paid or is payable at destination, the charter party bill of lading must be marked accordingly.
118. Applicants and issuing banks should be specific in stating the requirements of documents to show whether freight is to be prepaid or collected.
119. If a credit states that costs additional to freight are not acceptable, a charter party bill of lading must not indicate that costs additional to the freight have been or will be incurred. Such indication may be by express reference to additional costs or by the use of shipment terms which refer to costs associated with the loading or unloading of goods, such as Free In (FI), Free Out (FO), Free In and Out (FIO) and Free In and Out Stowed (FIOS). A reference in the transport document to costs which may be levied as a result of a delay in unloading the goods, or after the goods have been unloaded, is not considered to be an indication of additional costs in this context.

MULTIMODAL TRANSPORT DOCUMENTS

Application of UCP Article 26

120. If a credit requires presentation of a transport document covering transportation utilizing at least two modes of transport, and if the transport document clearly shows that it covers a shipment from the place of taking in charge and/or port, airport or place of loading to the place of final destination mentioned in the credit, UCP Article 26 is applicable. In such circumstances, a multimodal transport document must not indicate that shipment or dispatch has been effected by only one mode of transport, but it may be silent regarding the modes of transport utilized.

121. In all places where the term multimodal transport document is used within this document, it also includes the term combined transport document. A document need not be titled "Multimodal transport document" or "Combined transport document" to be acceptable under UCP Article 26, even if such expressions are used in the credit.

Full set of originals

122. A UCP Article 26 transport document must indicate the number of originals that have been issued. Transport documents marked "First Original", "Second Original", "Third Original", "Original", "Duplicate", "Triplicate", etc., or similar expressions are all originals. Multimodal transport documents need not be marked "original" to be acceptable under a credit. See section 3.1 of ICC Publication 470/871 Rev., 29 July 1999, 'The determination of an 'Original' document in the context of UCP 500 sub-Article 20(b).' *Signing of multimodal transport documents*
123. Original multimodal transport documents must bear a signature in the form described in UCP sub-Article 20(b) and the name of the carrier or multimodal transport operator must appear on the face of the multimodal transport document, identified as the carrier or multimodal transport operator.
- If an agent signs a multimodal transport document on behalf of the carrier or multimodal transport operator, the agent must be identified as agent, and must identify on whose behalf it is signing, unless the carrier or multimodal transport operator has been identified elsewhere on the face of the multimodal transport document.
 - If the master (captain) signs the multimodal transport document, the signature of the master (captain) must be identified as "master" ("captain"). In this event, the name of the master (captain) need not be stated.
 - If an agent signs the multimodal transport document on behalf of the master (captain), the agent must be identified as agent and the name of the master (captain) on whose behalf it is signing must be stated.
124. If a credit states "Freight Forwarder's Multimodal transport document is acceptable" or uses a similar phrase, then the multimodal transport document may be signed by a freight forwarder in the capacity of a freight forwarder, without the need to identify itself as carrier or multimodal transport operator or their agent. It is not necessary to show the name of the carrier or multimodal transport operator.

On board notations

125. The issuance date of a multimodal transport document will be deemed to be the date of dispatch, taking in charge or loading on board unless it bears a separate dated notation evidencing dispatch, taking in charge or loading on board from the location required by the credit, in which event the date of the notation will be deemed to be the date of shipment whether or not the date is before or after the issuance date of the document.
126. "Shipped in apparent good order", "Laden on board", "clean on board" or other phrases incorporating words such as "shipped" or "on board" have the same effect as "Shipped on board".

Place of taking in charge, dispatch, loading on board and destination

127. If a credit gives a geographical range for the place of taking in charge, dispatch, loading on board and destination (e.g., "Any European Port"), the multimodal transport document must indicate the actual place of taking in charge, dispatch, loading on board and destination, which must be within the geographical area or range quoted.

Consignee, order party, shipper and endorsement, notify party

128. If a credit requires that a multimodal transport document to show that the goods are consigned to a named party, e.g., "consigned to Bank X" (a "straight" consignment), rather than "to order" or "to order of Bank X", the multimodal transport document must not contain words such as "to order" and "to order of" that precede the name of that named party, whether typed or pre-printed. Likewise, if a credit requires the goods to be consigned "to order" or "to order of" a named party, the multimodal transport document must not show that the goods are consigned straight to the named party.
129. If a multimodal transport document is issued to order, or to order of the shipper, it must be endorsed by the shipper. An endorsement indicating that it is made for or on behalf of the shipper is acceptable.
130. If a credit does not stipulate a notify party(ies), the respective field on the multimodal transport document may be left blank or completed in any manner.

Transshipment and partial shipment

131. In a multimodal transport shipment, transshipment will occur, i.e., the unloading and reloading of goods from one mode of transport to another during the course of the journey from the point of taking in charge, dispatch or loading on board, to the final destination stipulated in the credit. Should transshipment be prohibited, banks will accept a multimodal transport document evidencing that transshipment has occurred provided the entire journey is covered by one and the same multimodal transport document.
132. If a credit prohibits partial shipments and more than one set of original multimodal transport documents are presented covering shipment, dispatch or taking in charge from one or more points of origin (as specifically allowed or within a given range in the credit), such documents are acceptable provided that they cover the movement of goods on the same means of conveyance and same journey and are destined for the same destination. In the event that more than one set of multimodal transport documents are presented, and if they incorporate different dates of shipment, dispatch or taking in charge, the latest of these dates will be taken for the calculation of any presentation period, and must fall on or before any latest date of shipment, dispatch or taking in charge specified in the credit.
133. Shipment on more than one means of conveyance (more than one truck (lorry), vessel, aircraft, etc.) is a partial shipment, even if such means of conveyance leave on the same day for the same destination.

Clean multimodal transport documents

134. Clauses or notations on multimodal transport documents that expressly declare a defective condition of the goods and/or packaging are not acceptable. Clauses or notations

that do not expressly declare a defective condition of the goods and/or packaging (e.g., “packaging may not be sufficient for the journey”) do not constitute a discrepancy. A statement that the packaging “is not sufficient for the journey” would not be acceptable.

135. The word “clean” need not appear on a multimodal transport document even though the credit may require a “clean on board multimodal transport document” or one marked “clean on board”.
136. If the word “clean” appears on a multimodal transport document and has been deleted, the multimodal transport document will not be deemed to be claused or unclean unless it specifically bears a clause or notation declaring that the goods or packaging are defective.

Goods description

137. A goods description in the multimodal transport document may be shown in general terms not inconsistent with that stated in the credit.

Corrections and alterations

138. Corrections and alterations on a multimodal transport document must be authenticated. Such authentication must appear to have been made by the carrier, master (captain), multimodal transport operator, or any one of their agents who may be different from the agent that may have issued or signed it, provided they are identified as an agent of the carrier, master (captain) or multimodal transport operator.
139. Copies of multimodal transport documents do not need to include any signature on, or authentication of any alterations or corrections that may have been made on the original.

Freight and additional costs

140. If a credit requires that a multimodal transport document show that freight has been paid or is payable at destination, the multimodal transport document must be marked accordingly.
141. Applicants and issuing banks should be specific in stating the requirements of documents to show whether freight is to be prepaid or collected.
142. If a credit states that costs additional to freight are not acceptable, a multimodal transport document must not indicate that costs additional to the freight have been or will be incurred.

Such indication may be by express reference to additional costs or by the use of shipment terms which refer to costs associated with the loading or unloading of goods, such as Free In (FI), Free Out (FO), Free In and Out (FIO) and Free In and Out Stowed (FIOS). A reference in the transport document to costs which may be levied as a result of a delay in unloading the goods or after the goods have been unloaded is not considered to be an indication of additional costs in this context.

Goods covered by more than one multimodal transport document

143. If a multimodal transport document states that the goods in a container are covered by that multimodal transport document plus one or more other multimodal transport documents, and the document states that all multimodal transport documents must be surrendered, or words of similar effect, this means that all multimodal transport documents related to that container must be presented in order for the container to be released.

Such a multimodal transport document is not acceptable unless all the multimodal transport documents form part of the same presentation under the same credit.

AIR TRANSPORT DOCUMENTS

Application of UCP Article 27

144. If a credit requires presentation of a transport document covering an airport-to-airport shipment, UCP Article 27 is applicable.
145. If a credit requires presentation of an “air waybill” or “air consignment note” or similar, UCP Article 27 applies. An air transport document need not use these terms in order to comply with UCP Article 27 provided that it covers an airport-to-airport shipment.

Original air transport documents

146. The air transport document must appear, from the face of the document, to be the “Original for Consignor/Shipper”. A requirement for a full set of originals is satisfied by the presentation of a document indicating that it is the original for consignor/shipper.

Signing of air transport documents

147. An original air transport document must bear a signature in the form described in UCP sub-Article 20(b) and the name of the carrier must appear on the face of the air transport document, identified as the carrier. If an agent signs an air transport document on behalf of a carrier, the agent must be identified as agent, and must identify the carrier on whose behalf it is signing, unless the carrier has been identified elsewhere on the face of the air transport document.
148. If a credit states “House air waybill is acceptable” or “Freight Forwarder’s air waybill is acceptable” or uses a similar phrase, then the air transport document may be signed by a freight forwarder in the capacity of a freight forwarder, without the need to identify itself as a carrier or agent for a named carrier.

It is not necessary to show the name of the carrier.

Goods accepted for carriage, date of shipment, and requirement for an actual date of dispatch

149. An air transport document must indicate that the goods have been accepted for carriage.
150. If a credit indicates that an actual date of dispatch must appear on the air transport document, the document must contain a separate notation that provides this information. This date of dispatch will be considered as the date of shipment. Information contained in the boxes typically titled “For Carrier Use Only” will not be considered for determining the actual date of dispatch.
151. If no actual date of dispatch is required by the credit to be shown on the document, the date of issuance of an air transport document will be deemed to be the date of dispatch, even if the document shows a flight date and/or a flight number in the box marked “For Carrier Use Only” or similar expression.

If the actual flight date is shown as a separate notation, but is not required by the credit, it will be disregarded in determining the date of shipment.

Airports of departure and destination

152. Air transport documents must indicate the airport of departure and airport of destination as stated in the credit. The identification of airports by the use of IATA codes instead of writing out the name in full (e.g., LHR instead of London Heathrow) is not a discrepancy.
153. If a credit gives a geographical area or range of airports of departure and/or destination (e.g., "Any European Airport"), the air transport document must indicate the actual airport of departure and/or destination, which must be within that geographical area or range quoted.

Consignee, order party and notify party

154. Air transport documents should not be issued "to order" or "to order of" a named party because they are not documents of title. Even if a credit calls for an air transport document made out "to order" or "to order of" a named party, a document presented showing goods consigned to that party, without mention of "to order" or "to order of", is acceptable.
155. If a credit does not state a notify party(ies), the respective field on the air transport document may be left blank or completed in any manner.

Transshipment and partial shipment

156. Transshipment is the unloading and reloading of goods from one aircraft to another during the course of carriage from the airport of departure to the airport of destination stipulated in the credit. If it does not occur between these two airports, unloading and reloading is not considered to be transshipment.
157. Although transshipment may be prohibited, UCP sub-Article 27(c) nonetheless permits transshipment provided the entire carriage is covered by one and the same air transport document.
158. If a credit prohibits partial shipments, and more than one air transport document is presented covering dispatch from one or more airports of departure (as specifically allowed, or within a given range, in the credit), such documents are acceptable, provided that they cover the dispatch of goods on the same aircraft and same flight, and are destined for the same airport of destination. In the event that more than one air transport document is presented incorporating different dates of shipment, the latest of these dates of shipment will be taken for the calculation of any presentation period and must fall on or before the latest shipment date specified in the credit.
159. Shipment on more than one aircraft is a partial shipment, even if the aircraft leave on the same day for the same destination.

Clean air transport documents

160. Clauses or notations on an air transport document which expressly declare a defective condition of the goods, and/or packaging are not acceptable. Clauses or notations on the air transport document which do not expressly declare a defective condition of the goods and/or packaging (e.g., "packaging may not be sufficient for the air journey") do not constitute a discrepancy. Statements that the packaging "is not sufficient for the air journey" would not be acceptable.
161. The word "clean" need not appear on the air transport document even though the credit may require a "clean air waybill" or one marked "clean on board".

162. If the word "clean" appears on an air transport document and has been deleted, the air transport document will not be deemed to be claused or unclean unless it specifically bears a clause or notation declaring that the goods or packaging are defective.

Goods description

163. A goods description in an air transport document may be shown in general terms not inconsistent with that stated in the credit.

Corrections and alterations

164. Corrections and alterations on air transport documents must be authenticated. Such authentication must appear to have been made by the carrier or any of its agents (who may be different from the agent that may have issued or signed it), provided it is identified as an agent of the carrier.
165. Copies of air transport documents do not need to include any signature of the carrier or agent (or shipper even if required by the credit to appear on the original air transport document), nor any authentication of any alterations or corrections that may have been made on the original.

Freight and additional costs

166. If a credit requires that an air transport document show that freight has been paid or is payable at destination, the air transport document must be marked accordingly.
167. Applicants and issuing banks should be specific in stating the requirements of documents to show whether freight is to be prepaid or collected.
168. If a credit states that costs additional to freight are not acceptable, an air transport document must not indicate that costs additional to the freight have been or will be incurred.
Such indication may be by express reference to additional costs or by the use of shipment terms that refer to costs associated with the loading or unloading of goods. A reference in the transport document to costs which may be levied as a result of a delay in unloading the goods or after the goods have been unloaded is not considered an indication of additional costs in this context.
169. Air transport documents often have separate boxes which, by their pre-printed headings, indicate that they are for freight charges "prepaid" and for freight charges "to collect", respectively.
A requirement in a credit for an air transport document to show that freight has been prepaid will be fulfilled by a statement of the freight charges under the heading "Freight Prepaid", or a similar expression or indication, and a requirement that an air transport document show that freight has to be collected will be fulfilled by a statement of the freight charges under the heading "Freight to Collect", or a similar expression or indication.

ROAD, RAIL OR INLAND WATERWAY TRANSPORT DOCUMENTS***Application of UCP Article 28***

170. If a credit requires presentation of a transport document covering movement by road, rail or inland waterway, UCP Article 28 is applicable.

Original and duplicate of road, rail or inland waterway transport documents

171. If a credit requires a road, rail or inland waterway transport document, the transport document presented will be accepted as an original whether or not it is marked as an original. A road transport document must show that it is the copy meant for the shipper or consignor or bear no marking indicating for whom the document has been prepared. With respect to rail waybills, the practice of many railway companies is to provide the shipper or consignor with only a duplicate (often a carbon copy) duly authenticated by the railway company's stamp.

Such a duplicate will be accepted as an original.

Carrier and signing of road, rail or inland waterway transport documents

172. The term "carrier" need not appear at the signature line provided the transport document appears to be signed by the carrier, or an agent on behalf of the carrier, if the carrier is otherwise identified as the "carrier" on the face of the transport document.

International standard banking practice is to accept a railway bill evidencing date stamp by the railway station of departure without showing the name of the carrier or a named agent signing for or on behalf of the carrier. (UCP sub-Article 28(a)(i)).

173. The term "carrier" used in UCP Article 28 includes terms in transport documents such as "issuing carrier", "actual carrier", "succeeding carrier", and "contracting carrier".

174. Any signature, authentication, reception stamp, or other indication of receipt on the transport document must appear to be made either by:

- a) the carrier, identified as the carrier, or
- b) a named agent signing for or on behalf of the carrier, and indicating the name and capacity of the carrier on whose behalf that agent is signing.

Order party and notify party

175. Transport documents which are not documents of title should not be issued "to order" or "to order of" a named party. Even if a credit calls for a transport document which is not a document of title to be made out "to order" or "to order of" a named party, such a document, showing goods consigned to that party, without mention of "to order" or "to order of", is acceptable.

176. If a credit does not stipulate a notify party(ies), the respective field on the transport document may be left blank or completed in any manner.

Partial shipment

177. Shipment on more than one means of conveyance (more than one truck (lorry), train, vessel, etc.) is a partial shipment, even if such means of conveyance leave on the same day for the same destination.

Goods description

178. A goods description in the transport document may be shown in general terms not inconsistent with that stated in the credit.

Corrections and alterations

179. Corrections and alterations on an UCP Article 28 transport document must be authenticated. Such authentication must appear to have been made by the carrier, or any one of their named agents, who may be different from the agent

that may have issued or signed it, provided they are identified as an agent of the carrier.

180. Copies of UCP Article 28 transport documents do not need to include any signature on, or authentication of any alterations or corrections that may have been made on the original.

Freight and additional costs

181. If a credit requires that a UCP Article 28 transport document show that freight has been paid or is payable at destination, the transport document must be marked accordingly.

182. Applicants and issuing banks should be specific in stating the requirements of documents to show whether freight is to be prepaid or collected.

INSURANCE DOCUMENTS

Application of UCP Articles 34-36

183. If a credit requires presentation of an insurance document, UCP Articles 34 through 36 are applicable.

Issues of insurance documents

184. Insurance documents must appear on their face to have been issued and signed by insurance companies or underwriters or their agents. If required on the face of the insurance document or in accordance with the credit terms, all originals must appear to have been countersigned.

185. An insurance document is acceptable if issued on an insurance broker's stationery, provided the insurance document has been signed by the insurance company or its agent, or by the underwriter or its agent. A broker may sign as agent for the named insurance company or the named underwriter.

Risks to be covered

186. The insurance document must cover the risks defined in the credit. If a credit is explicit with regard to risks to be covered, there must be no exclusions referenced in the document with respect to those risks. If a credit requires "all risks" coverage, this is satisfied by the presentation of an insurance document evidencing any "all risks" clause or notation, even if it is stated that certain risks are excluded. An insurance document indicating that it covers Institute Cargo Clauses (A) satisfies a condition in a credit calling for an "all risks" clause or notation.

187. Insurance covering the same risk for the same shipment must be covered under one document unless the insurance documents for partial cover each clearly reflect, by percentage or otherwise, the value of each insurer's cover and that each insurer will bear their share of the liability severally and without pre-conditions relating to any other insurance cover that may have been effected for that shipment.

188. The insurance document must show that risks are covered at least between the point of shipment, dispatch or taking in charge and the point of discharge or final destination as required by the credit.

Dates

189. Insurance documents must not bear a date of issuance which is later than the date of loading on board or dispatch or taking in charge of the goods (as applicable) at the place stated in the credit, unless it appears from the insurance

document that the cover is effective at the latest from the date of loading on board or dispatch or taking in charge (as applicable) of the goods at the place stated in the credit.

190. An insurance document that incorporates an expiry date must clearly indicate that such expiry date relates to the latest date that loading on board or dispatch or taking in charge of the goods (as applicable) is to occur, as opposed to an expiry date for the presentation of any claims there under.

Currency and amount

191. An insurance document must be issued in the currency of and, as a minimum, for the amount required by the credit. If a credit does not state a minimum percentage amount, then the minimum insurance amount must be 110% of the CIF value, or 110% of CIP value, as determined by the amounts reflected on the invoice or any other required document. A requirement for “Insurance for 110%”, or the like, is deemed to be the minimum amount of insurance coverage required.

The UCP does not provide for any maximum percentage.

192. If a credit requires the insurance cover to be irrespective of percentage, the insurance document must not contain a clause stating that the insurance cover is subject to a franchise or an excess deductible.
193. If it is apparent from the credit or from the documents that the final invoice amount only represents a certain part of the gross value of the goods (e.g., due to discounts, pre-payments or the like, or because part of the value of the goods is to be paid at a later date), the calculation of insurance cover must be based on the full gross value of the goods.

Insured party and endorsement

194. An insurance document must be in the form as required by the credit and, where necessary, be endorsed by the party to whose order claims are payable. A document issued to bearer is acceptable where the credit requires an insurance document endorsed in blank and vice versa.
195. If a credit is silent as to the insured party, an insurance document evidencing that claims are payable to the order of the shipper or beneficiary would not be acceptable unless endorsed. An insurance document should be issued or endorsed so that the right to receive payment under it passes upon, or prior to, the release of the documents.

CERTIFICATES OF ORIGIN

Basic requirement

196. A requirement for a certificate of origin will be satisfied by the presentation of a signed, dated document that certifies to the origin of the goods.

Issuers of certificates of origin

197. A certificate of origin must be issued by the party stated in the credit. However, if a credit requires a certificate of origin to be issued by the beneficiary, the exporter or the manufacturer, a document issued by a chamber of commerce will be deemed acceptable provided it clearly identifies the beneficiary, the exporter or the manufacturer as the case may be. If a credit does not state who is to issue the certificate, then a document issued by any party, including the beneficiary, is acceptable.

Contents of certificates of origin

198. The certificate of origin must appear to relate to the invoiced goods. The goods description in the certificate of origin may be shown in general terms not inconsistent with that stated in the credit or by any other reference indicating a relation to the goods in a required document.
199. Consignee information, if shown, must not be inconsistent with the consignee information in the transport document.

However, if a credit requires a transport document to be issued “to order”, “to the order of shipper”, “to order of the issuing bank”, or “consigned to the issuing bank”, the certificate of origin may show the applicant of the credit, or another party named therein, as consignee. If a credit has been transferred, the name of the first beneficiary as consignee would also be acceptable.

200. The certificate of origin may show the consignor or exporter as a party other than the beneficiary of the credit or the shipper on the transport document.

ICC UNIFORM RULES FOR BANK-TO-BANK REIMBURSEMENTS UNDER DOCUMENTARY CREDITS

A. General Provisions and Definitions

Article 1 - Application of URR

The Uniform Rules for Bank-to-Bank Reimbursements under Documentary Credits ("Rules"), ICC Publication No. 525, shall apply to all Bank-to-Bank Reimbursements where they are incorporated into the text of the Reimbursement Authorisation. They are binding on all parties thereto, unless otherwise expressly stipulated in the Reimbursement Authorisation. The Issuing Bank is responsible for indicating in the Documentary Credit ("Credit") that Reimbursement Claims are subject to these Rules.

In a Bank-to-Bank Reimbursement subject to these Rules, the Reimbursing Bank acts on the instructions and/or under the authority of the Issuing Bank.

These Rules are not intended to override or change the provisions of the ICC Uniform Customs and Practice for Documentary Credits.

Article 2 - Definitions

As used in these Rules, the following terms shall have the meanings specified in this Article and may be used in the singular or plural as appropriate:

- a. "Issuing Bank" shall mean the bank that has issued a Credit and the Reimbursement Authorisation under that Credit.
- b. "Reimbursing Bank" shall mean the bank instructed and/or authorised to provide reimbursement pursuant to a Reimbursement Authorisation issued by the Issuing Bank.
- c. "Reimbursement Authorisation" shall mean an instruction and/or authorisation, independent of the Credit, issued by an Issuing Bank to a Reimbursing Bank to reimburse a Claiming Bank, or, if so requested by the Issuing Bank, to accept and pay a time draft(s) drawn on the Reimbursing Bank.
- d. "Reimbursement Amendment" shall mean an advice from the Issuing Bank to a Reimbursing Bank stating changes to a Reimbursement Authorisation.
- e. "Claiming Bank" shall mean a bank that pays, incurs a deferred payment undertaking, accepts draft(s), or negotiates under a Credit and presents a Reimbursement Claim to the Reimbursing Bank. "Claiming Bank" shall include a bank authorised to present a Reimbursement Claim to the Reimbursing Bank on behalf of the bank that pays, incurs a deferred payment undertaking, accepts draft(s), or negotiates.
- f. "Reimbursement Claim" shall mean a request for reimbursement from the Claiming Bank to the Reimbursing Bank.
- g. "Reimbursement Undertaking" shall mean a separate irrevocable undertaking of the Reimbursing Bank, issued upon the authorisation or request of the Issuing Bank, to the Claiming Bank named in the Reimbursement Authorisation, to honour that bank's Reimbursement Claim provided the terms and conditions of the Reimbursement Undertaking have been complied with.
- h. "Reimbursement Undertaking Amendment" shall mean an advice from the Reimbursing Bank to the Claiming Bank named in the Reimbursement Authorisation, stating changes to a Reimbursement Undertaking.

- i. For the purposes of these Rules branches of a bank in different countries are considered separate banks.

Article 3 - Reimbursement Authorisations Versus Credits

A Reimbursement Authorisation is separate from the Credit to which it refers, and a Reimbursing Bank is not concerned with or bound by the terms and conditions of the Credit, even if any reference whatsoever to the terms and conditions of the Credit is included in the Reimbursement Authorisation.

B. Liabilities and Responsibilities

Article 4 - Honour of a Reimbursement Claim

Except as provided by the terms of its Reimbursement Undertaking a Reimbursing Bank is not obligated to honour a Reimbursement Claim.

Article 5 - Responsibilities of the Issuing Bank

The Issuing Bank is responsible for providing the information required in these Rules in both the Reimbursement Authorisation and Credit and is responsible for any consequences resulting from non-compliance with this provision.

C. Form and Notification of Authorisations, Amendments and Claims

Article 6 - Issuance and Receipt of a Reimbursement Authorisation or Reimbursement Amendment

- a. All Reimbursement Authorisations and Reimbursement Amendments must be issued in the form of an authenticated teletransmission or a signed letter.

When a Credit, or amendment thereto which has an effect on the Reimbursement Authorisation, is issued by teletransmission, the Issuing Bank should advise its Reimbursement Authorisation or Reimbursement Amendment to the Reimbursing Bank by authenticated teletransmission. The teletransmission will be deemed the operative Reimbursement Authorisation or the operative Reimbursement Amendment and no mail confirmation should be sent. Should a mail confirmation nevertheless be sent, it will have no effect and the Reimbursing Bank will have no obligation to check such mail confirmation against the operative Reimbursement Authorisation or the operative Reimbursement Amendment received by teletransmission.

- b. Reimbursement Authorisations and Reimbursement Amendments must be complete and precise. To guard against confusion and misunderstanding, Issuing Banks must not send to Reimbursing Banks:
 - i. a copy of the Credit or any part thereof or a copy of an amendment to the Credit in place of, or in addition to, the Reimbursement Authorisation or Reimbursement Amendment. If such copies are received by the Reimbursing Bank they shall be disregarded;
 - ii. multiple Reimbursement Authorisations under one teletransmission or letter, unless expressly agreed to by the Reimbursing Bank.
- c. Issuing Banks shall not require a certificate of compliance with the terms and conditions of the Credit in the Reimbursement Authorisation.
- d. All Reimbursement Authorisations must (in addition to the requirement of Article 1 for incorporation of reference to these Rules) state the following:
 - i. Credit number;

- ii. currency and amount;
- iii. additional amounts payable and tolerance, if any;
- iv. Claiming Bank or, in the case of freely negotiable credits, that claims can be made by any bank. In the absence of any such indication the Reimbursing Bank is authorised to pay any Claiming Bank;
- v. parties responsible for charges (Claiming Bank's and Reimbursing Bank's charges) in accordance with Article 16 of these Rules.

Reimbursement Amendments must state only the relative changes to the above and the Credit number.

- e. If the Reimbursing Bank is requested to accept and pay a time draft(s), the Reimbursement Authorisation must indicate the following, in addition to the information specified in (d) above:
 - i. tenor of draft(s) to be drawn;
 - ii. drawer;
 - iii. party responsible for acceptance and discount charges, if any.

Reimbursement Amendments must state the relative changes to the above.

Issuing Banks should not require a sight draft(s) to be drawn on the Reimbursing Bank.

- f. Any requirement for:
 - i. pre-notification of a Reimbursement Claim to the Issuing Bank must be included in the Credit and not in the Reimbursement Authorisation;
 - ii. pre-debit notification to the Issuing Bank must be indicated in the Credit.
- g. If the Reimbursing Bank is not prepared to act for any reason whatsoever under the Reimbursement Authorisation or Reimbursement Amendment, it must so inform the Issuing Bank without delay.
- h. In addition to the provisions of Articles 3 and 4, Reimbursing Banks are not responsible for the consequences resulting from non-reimbursement or delay in reimbursement of Reimbursement Claims, where any provision contained in this Article is not followed by the Issuing and/or Claiming Bank.

Article 7 - Expiry of a Reimbursement Authorisation

Except to the extent expressly agreed to by the Reimbursing Bank, the Reimbursement Authorisation must not have an expiry date or latest date for presentation of a claim except as indicated in Article 9.

Reimbursing Banks will assume no responsibility for the expiry date of Credits and if such date is provided in the Reimbursement Authorisation it will be disregarded.

The Issuing Bank must cancel its Reimbursement Authorisation for any unutilised portion of the Credit to which it refers, informing the Reimbursing Bank without delay.

Article 8 - Amendment or Cancellation of Reimbursement Authorisations

Except where the Issuing Bank has authorised or requested the Reimbursing Bank to issue a Reimbursement Undertaking as provided in Article 9 and the Reimbursing Bank has issued a Reimbursement Undertaking:

- a. The Issuing Bank may issue a Reimbursement Amendment or cancel a Reimbursement Authorisation at any time upon sending notice to that effect to the Reimbursing Bank.

- b. The Issuing Bank must send notice of any amendment to a Reimbursement Authorisation that has an effect on the reimbursement instructions contained in the Credit to the nominated bank or, in the case of a freely negotiable Credit, the advising bank. In the case of cancellation of the Reimbursement Authorisation prior to expiry of the Credit, the Issuing Bank must provide the nominated bank or the advising bank with new reimbursement instructions.
- c. The Issuing Bank must reimburse the Reimbursing Bank for any Reimbursement Claims honoured or draft(s) accepted by the Reimbursing Bank prior to the receipt by it of notice of cancellation or Reimbursement Amendment.

Article 9 - Reimbursement Undertakings

- a. In addition to the requirements of sub-Article 6 (a), (b) and (c) of these Rules, all Reimbursement Authorisations authorising or requesting the issuance of a Reimbursement Undertaking must comply with the provisions of this Article.
- b. An authorisation or request by the Issuing Bank to the Reimbursing Bank to issue a Reimbursement Undertaking is irrevocable ("Irrevocable Reimbursement Authorisation") and must (in addition to the requirement of Article 1 for incorporation of reference to these Rules) contain the following:
 - i. Credit number;
 - ii. currency and amount;
 - iii. additional amounts payable and tolerance, if any;
 - iv. full name and address of the Claiming Bank to whom the Reimbursement Undertaking should be issued;
 - v. latest date for presentation of a claim including any usance period;
 - vi. parties responsible for charges (Claiming Bank's and Reimbursing Bank's charges and Reimbursement Undertaking fee) in accordance with Article 16 of these Rules.
- c. If the Reimbursing Bank is requested to accept and pay a time draft(s), the Irrevocable Reimbursement Authorisation must also indicate the following, in addition to the information contained in (b) above:
 - i. tenor of draft(s) to be drawn;
 - ii. drawer;
 - iii. party responsible for acceptance and discount charges, if any.

Issuing Banks should not require a sight draft(s) to be drawn on the Reimbursing Bank.

- d. If the Reimbursing Bank is authorised or requested by the Issuing Bank to issue its Reimbursement Undertaking to the Claiming Bank but is not prepared to do so, it must so inform the Issuing Bank without delay.
- e. A Reimbursement Undertaking must indicate the terms and conditions of the undertaking and:
 - i. Credit number and Issuing Bank;
 - ii. currency and amount of the Reimbursement Authorisation,
 - iii. additional amounts payable and tolerance, if any;
 - iv. currency and amount of the Reimbursement Undertaking;
 - v. latest date for presentation of a claim including any usance period;

- vi. party to pay the Reimbursement Undertaking fee, if other than the Issuing Bank. The Reimbursing Bank must also include its charges, if any, that will be deducted from the amount claimed.
- f. If the latest date for presentation of a claim falls on a day on which the Reimbursing Bank is closed for reasons other than those mentioned in Article 15, the latest date for presentation of a claim shall be extended to the first following day on which the Reimbursing Bank is open.
- g. i. An Irrevocable Reimbursement Authorisation cannot be amended or cancelled without the agreement of the Reimbursing Bank.
- ii. When an Issuing Bank has amended its Irrevocable Reimbursement Authorisation, a Reimbursing Bank which has issued its Reimbursement Undertaking may amend its undertaking to reflect such amendment. If a Reimbursing Bank chooses not to issue its Reimbursement Undertaking Amendment it must so inform the Issuing Bank without delay.
- iii. An Issuing Bank which has issued its Irrevocable Reimbursement Authorisation Amendment, shall be irrevocably bound as of the time of its advice of the Irrevocable Reimbursement Authorisation Amendment.
- iv. The terms of the original Irrevocable Reimbursement Authorisation (or an Authorisation incorporating previously accepted Irrevocable Reimbursement Authorisation Amendments) will remain in force for the Reimbursing Bank until it communicates its acceptance of the amendment to the Issuing Bank.
- v. A Reimbursing Bank must communicate its acceptance or rejection of an Irrevocable Reimbursement Authorisation Amendment to the Issuing bank. A Reimbursing Bank is not required to accept or reject an Irrevocable Reimbursement Authorisation Amendment until it has received acceptance or rejection from the Claiming Bank to its Reimbursement Undertaking Amendment.
- h. i. A Reimbursement Undertaking cannot be amended or cancelled without the agreement of the Claiming Bank.
- ii. A Reimbursing Bank which has issued its Reimbursement Undertaking Amendment shall be irrevocably bound as of the time of its advice of the Reimbursement Undertaking Amendment.
- iii. The terms of the original Reimbursement Undertaking (or a Reimbursement Undertaking incorporating previously accepted Reimbursement Amendments) will remain in force for the Claiming Bank until it communicates its acceptance of the Reimbursement Undertaking Amendment to the Reimbursing Bank.
- iv. A Claiming Bank must communicate its acceptance or rejection of a Reimbursement Undertaking Amendment to the Reimbursing Bank.
- mail confirmation is to be sent. In the event such a mail confirmation is sent, the Claiming Bank will be responsible for any consequences that may arise from a duplicate reimbursement;
- ii. must clearly indicate the Credit number and Issuing Bank (and Reimbursing Bank's reference number, if known);
- iii. must separately stipulate the principal amount claimed, any additional amount(s) and charges;
- iv. must not be a copy of the Claiming Bank's advice of payment, deferred payment, acceptance or negotiation to the Issuing Bank;
- v. must not include multiple Reimbursement Claims under one teletransmission or letter;
- vi. must, in the case of a Reimbursement Undertaking, comply with the terms and conditions of the Reimbursement Undertaking.
- b. In cases where a time draft is to be drawn on the Reimbursing Bank, the Claiming Bank must forward the draft with the Reimbursement Claim to the Reimbursing Bank for processing, and include the following in its claim if required by the Credit and/or Reimbursement Undertaking:
 - i. general description of the goods and/or services;
 - ii. country of origin;
 - iii. place of destination/performance.
 and if the transaction covers the shipment of merchandise,
 - iv. date of shipment;
 - v. place of shipment.
- c. Claiming Banks must not indicate in a Reimbursement Claim that a payment, acceptance or negotiation was made under reserve or against an indemnity.
- d. Reimbursing Banks assume no liability or responsibility for any consequences that may arise out of any non-acceptance or delay of processing should the Claiming Bank fail to follow the provisions of this Article.

Article 11 - Processing Reimbursement Claims

- a. i. Reimbursing Banks shall have a reasonable time, not to exceed three banking days following the day of receipt of the Reimbursement Claim, to process claims. Reimbursement Claims received outside banking hours are deemed to be received on the next banking day.
If a pre-debit notification is required by the Issuing Bank, this pre-debit notification period shall be in addition to the processing period mentioned above.
- ii. If the Reimbursing Bank determines not to reimburse, either because of a non-conforming claim under a Reimbursement Undertaking, or for any reason whatsoever under a Reimbursement Authorisation, it shall give notice to that effect by telecommunication or, if that is not possible, by other expeditious means, without delay, but no later than the close of the third banking day following the day of receipt of the claim (plus any additional period mentioned in sub-Article (i) above). Such notice shall be sent to the Claiming Bank and the Issuing Bank and, in the case of a Reimbursement Undertaking, it must state the reasons for non-payment of the claim.
- b. Reimbursing Banks will not process requests for back value (value dating prior to the date of a Reimbursement Claim) from the Claiming Bank.

Article 10 - Standards for Reimbursement Claims

- a. The Claiming Bank's claim for reimbursement:
 - i. must be in the form of a teletransmission, unless specifically prohibited by the Issuing Bank, or an original letter. A Reimbursing Bank has the right to request that a Reimbursement Claim be authenticated and in such case the Reimbursing Bank shall not be liable for any consequences resulting from any delay incurred. If a Reimbursement Claim is made by teletransmission, no

- c. Where a Reimbursing Bank has not issued a Reimbursement Undertaking and a reimbursement is due on a future date:
 - i. The Reimbursement Claim must specify the pre-determined reimbursement date.
 - ii. The Reimbursement Claim should not be presented to the Reimbursing Bank more than ten (10) of its banking days prior to such predetermined date. If a Reimbursement Claim is presented more than ten (10) banking days prior to the predetermined date, the Reimbursing Bank may disregard the Reimbursement Claim. If the Reimbursing Bank disregards the Reimbursement Claim it must so inform the Claiming Bank by teletransmission or other expeditious means without delay.
 - iii. If the predetermined reimbursement date is more than three banking days following the day of receipt of the Reimbursement Claim, the Reimbursing Bank has no obligation to provide notice of non-reimbursement until such predetermined date, or no later than the close of the third banking day following the receipt of the Reimbursement Claim plus any additional period mentioned in (a) (i) above, whichever is later.
- d. Unless otherwise expressly agreed to by the Reimbursing Bank and the Claiming Bank, Reimbursing Banks will effect reimbursement under a Reimbursement Claim only to the Claiming Bank.
- e. Reimbursing Banks assume no liability or responsibility if they honour a Reimbursement Claim that indicates that a payment, acceptance or negotiation was made under reserve or against an indemnity and shall disregard such indication. Such reserve or indemnity concerns only the relations between the Claiming Bank and the party towards whom the reserve was made, or from whom, or on whose behalf, the indemnity was obtained.

Article 12 - Duplications of Reimbursement Authorisations

An Issuing Bank must not, upon receipt of documents, give a new Reimbursement Authorisation, or additional instructions, unless they constitute an amendment to, or a cancellation of an existing Reimbursement Authorisation. If the Issuing Bank does not comply with the above and a duplicate reimbursement is made, it is the responsibility of the Issuing Bank to obtain the return of the amount of the duplicate reimbursement. The Reimbursing Bank assumes no liability or responsibility for any consequences that may arise from any such duplication.

D. Miscellaneous Provisions

Article 13 - Foreign Laws and Usages

The Issuing Bank shall be bound by and shall indemnify the Reimbursing Bank against all obligations and responsibilities imposed by foreign laws and usages.

Article 14 - Disclaimer on the Transmission of Messages

Reimbursing Banks assume no liability or responsibility for the consequences arising out of delay and/or loss in transit of any message(s), letter(s) or document(s), or for delay, mutilation or other errors arising in the transmission of any telecommunication. Reimbursing Banks assume no liability or responsibility for errors in translation.

Article 15 - Force Majeure

Reimbursing Banks assume no liability or responsibility for the consequences arising out of the interruption of their business by Acts of God, riots, civil commotions, insurrections, wars or any other causes beyond their control, or by any strikes or lockouts.

Article 16 - Charges

- a. The Reimbursing Bank's charges should be for the account of the Issuing Bank. However, in cases where the charges are for the account of another party, it is the responsibility of the Issuing Bank to so indicate in the original Credit and in the Reimbursement Authorisation.
- b. When honouring a Reimbursement Claim, a Reimbursing Bank is obligated to follow the instructions regarding any charges contained in the Reimbursement Authorisation.
- c. In cases where the Reimbursing Bank's charges are for the account of another party they shall be deducted when the Reimbursement Claim is honoured. Where a Reimbursing Bank follows the instructions of the Issuing Bank regarding charges (including commissions, fees, costs or expenses) and these charges are not paid or a Reimbursement Claim is never presented to the Reimbursing Bank under the Reimbursement Authorisation, the Issuing Bank remains liable for such charges.
- d. Unless otherwise stated in the Reimbursement Authorisation, all charges paid by the Reimbursing Bank will be in addition to the amount of the Authorisation provided that the Claiming Bank indicates the amount of such charges.
- e. If the Issuing Bank fails to provide the Reimbursing Bank with instructions regarding charges, all charges shall be for the account of the Issuing Bank.

Article 17 - Interest Claims/Loss of Value

All claims for loss of interest, loss of value due to any exchange rate fluctuations, revaluations or devaluations are between the Claiming Bank and the Issuing Bank, unless such losses result from the non-performance of the Reimbursing Bank's obligation under a Reimbursement Undertaking.

ICC UNIFORM RULES FOR COLLECTION

A. General Provisions and Definitions

Article 1

Application of URC 522

- a. The Uniform Rules for Collections, 1995 Revision, ICC Publication No. 522, shall apply to all collections as defined in Article 2 where such rules are incorporated into the text of the “collection instruction” referred to in Article 4 and are binding on all parties thereto unless otherwise expressly agreed or contrary to the provisions of a national, state or local law and/or regulation which cannot be departed from.
- b. Banks shall have no obligation to handle either a collection or any collection instruction or subsequent related instructions.
- c. If a bank elects, for any reason, not to handle a collection or any related instructions received by it, it must advise the party from whom it received the collection or the instructions by telecommunication or, if that is not possible, by other expeditious means, without delay.

Article 2

Definition of Collection

For the purposes of these Articles:

- a. “Collection” means the handling by banks of documents as defined in sub-Article 2(b), in accordance with instructions received, in order to:
 1. obtain payment and/or acceptance,or
 2. deliver documents against payment and/or against acceptance,or
 3. deliver documents on other terms and conditions.
- b. “Documents” means financial documents and/or commercial documents:
 1. “Financial documents” means bills of exchange, promissory notes, cheques, or other similar instruments used for obtaining the payment of money;
 2. “Commercial documents” means invoices, transport documents, documents of title or other similar documents, or any other documents whatsoever, not being financial documents.
- c. “Clean collection” means collection of financial documents not accompanied by commercial documents.
- d. “Documentary collection” means collection of:
 1. Financial documents accompanied by commercial documents;
 2. Commercial documents not accompanied by financial documents.

Article 3

Parties to a Collection

- a. For the purposes of these Articles the “parties thereto” are:
 1. the “principal” who is the party entrusting the handling of a collection to a bank;
 2. the “remitting bank” which is the bank to which the principal has entrusted the handling of a collection;

3. the “collecting bank” which is any bank, other than the remitting bank, involved in processing the collection;
 4. the “presenting bank” which is the collecting bank making presentation to the drawee.
- b. The “drawee” is the one to whom presentation is to be made in accordance with the collection instruction.

B. Form and Structure of Collections

Article 4

Collection Instruction

- a.
 1. All documents sent for collection must be accompanied by a collection instruction indicating that the collection is subject to URC 522 and giving complete and precise instructions. Banks are only permitted to act upon the instructions given in such collection instruction, and in accordance with these Rules.
 2. Banks will not examine documents in order to obtain instructions.
 3. Unless otherwise authorised in the collection instruction, banks will disregard any instructions from any party/bank other than the party/bank from whom they received the collection.
- b. A collection instruction should contain the following items of information, as appropriate.
 1. Details of the bank from which the collection was received including full name, postal and SWIFT addresses, telex, telephone, facsimile numbers and reference.
 2. Details of the principal including full name, postal address, and if applicable telex, telephone and facsimile numbers.
 3. Details of the drawee including full name, postal address, or the domicile at which presentation is to be made and if applicable telex, telephone and facsimile numbers.
 4. Details of the presenting bank, if any, including full name, postal address, and if applicable telex, telephone and facsimile numbers.
 5. Amount(s) and currency(ies) to be collected.
 6. List of documents enclosed and the numerical count of each document.
 7.
 - a. Terms and conditions upon which payment and/or acceptance is to be obtained.
 - b. Terms of delivery of documents against:
 - 1) payment and/or acceptance
 - 2) other terms and conditions

It is the responsibility of the party preparing the collection instruction to ensure that the terms for the delivery of documents are clearly and unambiguously stated, otherwise banks will not be responsible for any consequences arising therefrom.
 8. Charges to be collected, indicating whether they may be waived or not.
 9. Interest to be collected, if applicable, indicating whether it may be waived or not, including:
 - a. rate of interest
 - b. interest period
 - c. basis of calculation (for example 360 or 365 days in a year) as applicable.

10. Method of payment and form of payment advice.
11. Instructions in case of non-payment, non-acceptance and/or non-compliance with other instructions.
- c. 1. Collection instructions should bear the complete address of the drawee or of the domicile at which the presentation is to be made. If the address is incomplete or incorrect, the collecting bank may, without any liability and responsibility on its part, endeavour to ascertain the proper address.
2. The collecting bank will not be liable or responsible for any ensuing delay as a result of an incomplete/incorrect address being provided.

C. Form of Presentation

Article 5

Presentation

- a. For the purposes of these Articles, presentation is the procedure whereby the presenting bank makes the documents available to the drawee as instructed.
- b. The collection instruction should state the exact period of time within which any action is to be taken by the drawee.
Expressions such as “first”, “prompt”, “immediate”, and the like should not be used in connection with presentation or with reference to any period of time within which documents have to be taken up or for any other action that is to be taken by the drawee. If such terms are used banks will disregard them.
- c. Documents are to be presented to the drawee in the form in which they are received, except that banks are authorised to affix any necessary stamps, at the expense of the party from whom they received the collection unless otherwise instructed, and to make any necessary endorsements or place any rubber stamps or other identifying marks or symbols customary to or required for the collection operation.
- d. For the purpose of giving effect to the instructions of the principal, the remitting bank will utilise the bank nominated by the principal as the collecting bank. In the absence of such nomination, the remitting bank will utilise any bank of its own, or another bank's choice in the country of payment or acceptance or in the country where other terms and conditions have to be complied with.
- e. The documents and collection instruction may be sent directly by the remitting bank to the collecting bank or through another bank as intermediary.
- f. If the remitting bank does not nominate a specific presenting bank, the collecting bank may utilise a presenting bank of its choice.

Article 6

Sight/Acceptance

In the case of documents payable at sight the presenting bank must make presentation for payment without delay. In the case of documents payable at a tenor other than sight the presenting bank must, where acceptance is called for, make presentation for acceptance without delay, and where payment is called for, make presentation for payment not later than the appropriate maturity date.

Article 7

Release of Commercial Documents

Documents Against Acceptance (D/A) vs.
Documents Against Payment (D/P)

- a. Collections should not contain bills of exchange payable at a future date with instructions that commercial documents are to be delivered against payment.
- b. If a collection contains a bill of exchange payable at a future date, the collection instruction should state whether the commercial documents are to be released to the drawee against acceptance (D/A) or against payment (D/P).
In the absence of such statement commercial documents will be released only against payment and the collecting bank will not be responsible for any consequences arising out of any delay in the delivery of documents.
- c. If a collection contains a bill of exchange payable at a future date and the collection instruction indicates that commercial documents are to be released against payment, documents will be released only against such payment and the collecting bank will not be responsible for any consequences arising out of any delay in the delivery of documents.

Article 8

Creation of Documents

Where the remitting bank instructs that either the collecting bank or the drawee is to create documents (bills of exchange, promissory notes, trust receipts, letters of undertaking or other documents) that were not included in the collection, the form and wording of such documents shall be provided by the remitting bank, otherwise the collecting bank shall not be liable or responsible for the form and wording of any such document provided by the collecting bank and/or the drawee.

D. Liabilities and Responsibilities

Article 9

Good Faith and Reasonable Care

Banks will act in good faith and exercise reasonable care.

Article 10

Documents vs. Goods/Services/Performances

- a. Goods should not be despatched directly to the address of a bank or consigned to or to the order of a bank without prior agreement on the part of that bank.
Nevertheless, in the event that goods are despatched directly to the address of a bank or consigned to or to the order of a bank for release to a drawee against payment or acceptance or upon other terms and conditions without prior agreement on the part of that bank, such bank shall have no obligation to take delivery of the goods, which remain at the risk and responsibility of the party despatching the goods.
- b. Banks have no obligation to take any action in respect of the goods to which a documentary collection relates, including storage and insurance of the goods even when specific instructions are given to do so. Banks will only take such action if, when, and to the extent that they agree to do so in each case. Notwithstanding the provisions of sub-Article 1(c) this rule applies even in the absence of any specific advice to this effect by the collecting bank.

- c. Nevertheless, in the case that banks take action for the protection of the goods, whether instructed or not, they assume no liability or responsibility with regard to the fate and/or condition of the goods and/or for any acts and/or omissions on the part of any third parties entrusted with the custody and/or protection of the goods. However, the collecting bank must advise without delay the bank from which the collection instruction was received of any such action taken.
- d. Any charges and/or expenses incurred by banks in connection with any action taken to protect the goods will be for the account of the party from whom they received the collection.
- e. 1. Notwithstanding the provisions of sub-Article 10(a), where the goods are consigned to or to the order of the collecting bank and the drawee has honoured the collection by payment, acceptance or other terms and conditions, and the collecting bank arranges for the release of the goods, the remitting bank shall be deemed to have authorised the collecting bank to do so.
- 2. Where a collecting bank on the instructions of the remitting bank or in terms of sub-Article 10(e)i, arranges for the release of the goods, the remitting bank shall indemnify such collecting bank for all damages and expenses incurred.

Article 11

Disclaimer for Acts of an Instructed Party

- a. Banks utilising the services of another bank or other banks for the purpose of giving effect to the instructions of the principal, do so for the account and at the risk of such principal.
- b. Banks assume no liability or responsibility should the instructions they transmit not be carried out, even if they have themselves taken the initiative in the choice of such other bank(s).
- c. A party instructing another party to perform services shall be bound by and liable to indemnify the instructed party against all obligations and responsibilities imposed by foreign laws and usages.

Article 12

Disclaimer on Documents Received

- a. Banks must determine that the documents received appear to be as listed in the collection instruction and must advise by telecommunication or, if that is not possible, by other expeditious means, without delay, the party from whom the collection instruction was received of any documents missing, or found to be other than listed.
Banks have no further obligation in this respect.
- b. If the documents do not appear to be listed, the remitting bank shall be precluded from disputing the type and number of documents received by the collecting bank.
- c. Subject to sub-Article 5(c) and sub-Articles 12(a) and 12(b) above, banks will present documents as received without further examination.

Article 13

Disclaimer on Effectiveness of Documents

Banks assume no liability or responsibility for the form, sufficiency, accuracy, genuineness, falsification or legal effect

of any document(s), or for the general and/or particular conditions stipulated in the document(s) or superimposed thereon; nor do they assume any liability or responsibility for the description, quantity, weight, quality, condition, packing, delivery, value or existence of the goods represented by any document(s), or for the good faith or acts and/or omissions, solvency, performance or standing of the consignors, the carriers, the forwarders, the consignees or the insurers of the goods, or any other person whomsoever.

Article 14

Disclaimer on Delays, Loss in Transit and Translation

- a. Banks assume no liability or responsibility for the consequences arising out of delay and/or loss in transit of any message(s), letter(s) or document(s), or for delay, mutilation or other error(s) arising in transmission of any telecommunication or for error(s) in translation and/or interpretation of technical terms.
- b. Banks will not be liable or responsible for any delays resulting from the need to obtain clarification of any instructions received.

Article 15

Force Majeure

Banks assume no liability or responsibility for consequences arising out of the interruption of their business by Acts of God, riots, civil commotions, insurrections, wars, or any other causes beyond their control or by strikes or lockouts.

E. Payment

Article 16

Payment Without Delay

- a. Amounts collected (less charges and/or disbursements and/or expenses where applicable) must be made available without delay to the party from whom the collection instruction was received in accordance with the terms and conditions of the collection instruction.
- b. Notwithstanding the provisions of sub-Article 1(c), and unless otherwise agreed, the collecting bank will effect payment of the amount collected in favour of the remitting bank only.

Article 17

Payment in Local Currency

In the case of documents payable in the currency of the country of payment (local currency), the presenting bank must, unless otherwise instructed in the collection instruction, release the documents to the drawee against payment in local currency only if such currency is immediately available for disposal in the manner specified in the collection instruction.

Article 18

Payment in Foreign Currency

In the case of documents payable in a currency other than that of the country of payment (foreign currency), the presenting bank must, unless otherwise instructed in the collection instruction, release the documents to the drawee against payment in the designated foreign currency only if such foreign currency can immediately be remitted in accordance with the instructions given in the collection instruction.

Article 19

Partial Payments

- a. In respect of clean collections, partial payments may be accepted if and to the extent to which and on the conditions on which partial payments are authorised by the law in force in the place of payment. The financial document(s) will be released to the drawee only when full payment thereof has been received.
- b. In respect of documentary collections, partial payments will only be accepted if specifically authorised in the collection instruction. However, unless otherwise instructed, the presenting bank will release the documents to the drawee only after full payment has been received, and the presenting bank will not be responsible for any consequences arising out of any delay in the delivery of documents.
- c. In all cases partial payments will be accepted only subject to compliance with the provisions of either Article 17 or Article 18 as appropriate.
Partial payment, if accepted, will be dealt with in accordance with the provisions of Article 16.

F. Interest, Charges and Expenses

Article 20

Interest

- a. If the collection instruction specifies that interest is to be collected and the drawee refuses to pay such interest, the presenting bank may deliver the document(s) against payment or acceptance or on other terms and conditions as the case may be, without collecting such interest, unless sub-Article 20(c) applies.
- b. Where such interest is to be collected, the collection instruction must specify the rate of interest, interest period and basis of calculation.
- c. Where the collection instruction expressly states that interest may not be waived and the drawee refuses to pay such interest the presenting bank will not deliver documents and will not be responsible for any consequences arising out of any delay in the delivery of document(s). When payment of interest has been refused, the presenting bank must inform by telecommunication or, if that is not possible, by other expeditious means without delay the bank from which the collection instruction was received.

Article 21

Charges and Expenses

- a. If the collection instruction specifies that collection charges and/or expenses are to be for account of the drawee and the drawee refuses to pay them, the presenting bank may deliver the document(s) against payment or acceptance or on other terms and conditions as the case may be, without collecting charges and/or expenses, unless sub-Article 21(b) applies.
Whenever collection charges and/or expenses are so waived they will be for the account of the party from whom the collection was received and may be deducted from the proceeds.
- b. Where the collection instruction expressly states that charges and/or expenses may not be waived and the drawee refuses to pay such charges and/or expenses, the present-

ing bank will not deliver documents and will not be responsible for any consequences arising out of any delay in the delivery of the document(s). When payment of collection charges and/or expenses has been refused the presenting bank must inform by telecommunication or, if that is not possible, by other expeditious means without delay the bank from which the collection instruction was received.

- c. In all cases where in the express terms of a collection instruction or under these Rules, disbursements and/or expenses and/or collection charges are to be borne by the principal, the collecting bank(s) shall be entitled to recover promptly outlays in respect of disbursements, expenses and charges from the bank from which the collection instruction was received, and the remitting bank shall be entitled to recover promptly from the principal any amount so paid out by it, together with its own disbursements, expenses and charges, regardless of the fate of the collection.
- d. Banks reserve the right to demand payment of charges and/or expenses in advance from the party from whom the collection instruction was received, to cover costs in attempting to carry out any instructions, and pending receipt of such payment also reserve the right not to carry out such instructions.

G. Other Provision

Article 22

Acceptance

The presenting bank is responsible for seeing that the form of the acceptance of a bill of exchange appears to be complete and correct, but is not responsible for the genuineness of any signature or for the authority of any signatory to sign the acceptance.

Article 23

Promissory Notes and Other Instruments

The presenting bank is not responsible for the genuineness of any signature or for the authority of any signatory to sign a promissory note, receipt, or other instruments.

Article 24

Protest

The collection instruction should give specific instructions regarding protest (or other legal process in lieu thereof), in the event of non-payment or non-acceptance.

In the absence of such specific instructions, the banks concerned with the collection have no obligation to have the document(s) protested (or subjected to other legal process in lieu thereof) for non-payment or non-acceptance.

Any charges and/or expenses incurred by banks in connection with such protest, or other legal process, will be for the account of the party from whom the collection instruction was received.

Article 25

Case-of-Need

If the principal nominates a representative to act as case-of-need in the event of non-payment and/or non-acceptance the collection instruction should clearly and fully indicate the powers of such case-of-need. In the absence of such indication banks will not accept any instructions from the case-of-need.

Article 26

Advices

Collecting banks are to advise fate in accordance with the following rules:

a. **Form of Advice**

All advices or information from the collecting bank to the bank from which the collection instruction was received, must bear appropriate details including, in all cases, the latter bank's reference as stated in the collection instruction.

b. **Method of Advice**

It shall be the responsibility of the remitting bank to instruct the collecting bank regarding the method by which the advices detailed in sub-Articles (c)i, (c)ii and (c)iii are to be given. In the absence of such instructions, the collecting bank will send the relative advices by the method of its choice at the expense of the bank from which the collection instruction was received.

c. 1. **Advice of Payment**

The collecting bank must send without delay advice of payment to the bank from which the collection instruction was received, detailing the amount or amounts collected, charges and/or disbursements and/or expenses deducted, where appropriate, and method of disposal of the funds.

2. **Advice of Acceptance**

The collecting bank must send without delay advice of acceptance to the bank from which the collection instruction was received.

3. **Advice of Non-Payment and/or Non-Acceptance**

The presenting bank should endeavour to ascertain the reasons for non-payment and/or non-acceptance and advise accordingly, without delay, the bank from which it received the collection instruction.

The presenting bank must send without delay advice of non-payment and/or advice of non-acceptance to the bank from which it received the collection instruction.

On receipt of such advice the remitting bank must give appropriate instructions as to the further handling of the documents. If such instructions are not received by the presenting bank within 60 days after its advice of non-payment and/or non-acceptance, the documents may be returned to the bank from which the collection instruction was received without any further responsibility on the part of the presenting bank.

INTERNATIONAL STANDBY PRACTICES - ISP98

Preface

The International Standby Practices (ISP98) reflects generally accepted practice, custom, and usage of standby letters of credit. It provides separate rules for standby letters of credit in the same sense that the Uniform Customs and Practice for Documentary Credits (UCP) and the Uniform Rules for Demand Guarantees (URDG) do for commercial letters of credit and independent bank guarantees.

The formulation of standby letter of credit practices in separate rules evidences the maturity and importance of this financial product. The amounts outstanding of standbys greatly exceed the outstanding amounts of commercial letters of credit. While the standby is associated with the United States where it originated and where it is most widely used, it is truly an international product. Non-U.S. bank outstandings have exceeded those of U.S. banks in the United States alone. Moreover, the standby is used increasingly throughout the world.

Standbys are issued to support payment, when due or after default, of obligations based on money loaned or advanced, or upon the occurrence or non-occurrence of another contingency.

For convenience, standbys are commonly classified descriptively (and without operative significance in the application of these Rules) based on their function in the underlying transaction or other factors not necessarily related to the terms and conditions of the standby itself. For example:

A "Performance Standby" supports an obligation to perform other than to pay money, including for the purpose of covering losses arising from a default of the applicant in completion of the underlying transactions.

An "Advance Payment Standby" supports an obligation to account for an advance payment made by the beneficiary to the applicant.

A "Bid Bond/Tender Bond Standby" supports an obligation of the applicant to execute a contract if the applicant is awarded a bid.

A "Counter Standby" supports the issuance of a separate standby or other undertaking by the beneficiary of the counter standby.

A "Financial Standby" supports an obligation to pay money, including any instrument evidencing an obligation to repay borrowed money.

A "Direct Pay" Standby supports payment when due of an underlying payment obligation typically in connection with a financial standby without regard to a default.

An "Insurance Standby" supports an insurance or reinsurance obligation of the applicant.

A "Commercial Standby" supports the obligations of an applicant to pay for goods or services in the event of non-payment by other methods.

In the past, many standbys have been issued subject to the UCP even though it was intended for commercial letters of credit. The UCP reinforced the independence and documentary character of the standby. It also provided standards for examination and notice of dishonor and a basis to resist market pressures to embrace troublesome practices such as the issuance of standbys without expiration dates.

Despite these important contributions, it has long been apparent that the UCP was not fully applicable nor

appropriate for standbys, as is recognized in UCP 500 Article 1 which provides that it applies “to the extent to which they may be applicable.” Even the least complex standbys (those calling for presentation of a draft only) pose problems not addressed by the UCP. More complex standbys (those involving longer terms or automatic extensions, transfer on demand, requests that the beneficiary issue its own undertaking to another, and the like) require more specialized rules of practice. The ISP fills these needs.

The ISP differs from the UCP in style and approach because it must receive acceptance not only from bankers and merchants, but also from a broader range of those actively involved in standby law and practice—corporate treasurers and credit managers, rating agencies, government agencies and regulators, and indenture trustees as well as their counsel. Because standbys are often intended to be available in the event of disputes or applicant insolvency, their texts are subject to a degree of scrutiny not encountered in the commercial letter of credit context. As a result, the ISP is also written to provide guidance to lawyers and judges in the interpretation of standby practice.

Differences in substance result either from different practices, different problems, or the need for more precision. In addition, the ISP proposes basic definitions should the standby permit or require presentation of documents by electronic means. Since standbys infrequently require presentation of negotiable documents, standby practice is currently more conducive to electronic presentations, and the ISP provides definitions and rules encouraging such presentations. The development of S.W.I.F.T. message types for the ISP is anticipated.

The ISP, like the UCP for commercial letters of credit, simplifies, standardizes, and streamlines the drafting of standbys, and provides clear and widely accepted answers to common problems. There are basic similarities with the UCP because standby and commercial practices are fundamentally the same. Even where the rules overlap, however, the ISP is more precise, stating the intent implied in the UCP rule, in order to make the standby more dependable when a drawing or honor is questioned.

Like the UCP and the URDG, the ISP will apply to any independent undertaking issued subject to it. This approach avoids the impractical and often impossible task of identifying and distinguishing standbys from independent guarantees and, in many cases, commercial letters of credit. The choice of which set of rules to select is, therefore, left to the parties—as it should be. One may well choose to use the ISP for certain types of standbys, the UCP for others, and the URDG for still others. While the ISP is not intended to be used for dependent undertakings such as accessory guarantees and insurance contracts, it may be useful in some situations in indicating that a particular undertaking which might otherwise be treated as dependent under local law is intended to be independent.

For the ISP to apply to a standby, an undertaking should be made subject to these Rules by including language such as (but not limited to):

This undertaking is issued subject to the International Standby Practices 1998.

or

Subject to ISP98.

Although the ISP can be varied by the text of a standby, it provides neutral rules acceptable in the majority of situations and a useful starting point for negotiations in other situations. It will save parties (including banks that issue, confirm, or are beneficiaries of standbys) considerable time and expense in negotiating and drafting standby terms.

The ISP is designed to be compatible with the United Nations Convention on Independent Guarantees and Standby Letters of Credit (which represents a useful and practical formulation of basic standby and independent guarantee law) and also with local law, whether statutory or judicial, and to embody standby letter of credit practice under that law. If these rules conflict with mandatory law on issues such as assignment of proceeds or transfer by operation of law, applicable law will, of course, control. Nonetheless, most of these issues are rarely addressed by local law and progressive commercial law will often look to the practice as recorded in the ISP for guidance in such situations, especially with respect to cross border undertakings. As a result, it is expected that the ISP will complement local law rather than conflict with it.

The ISP is intended to be used also in arbitration as well as judicial proceedings (such as the expert based letter of credit arbitration system developed by the International Center for Letter of Credit Arbitration (ICLOCA) Rules or general commercial ICC arbitration) or with alternative methods of dispute resolution. Such a choice should be made expressly and with appropriate detail. At a minimum, it can be made in connection with the clause relating to ISP98 - e.g., This undertaking is issued subject to ISP98, and all disputes arising out of it or related to it are subject to arbitration under ICLOCA Rules (1996).

Although translations of the ISP into other languages are envisioned and will be monitored for integrity, the English text is the official text of the ISP in the event of disputes.

The ISP is the product of the work of the ISP Working Group under the auspices of the Institute of International Banking Law & Practice, Inc. which interacted with hundreds of persons over a five year period, and has benefited from comments received from individuals, banks, and national and international associations. In particular, the participation of the International Financial Services Association (formerly the USCIB) and the Ad Hoc Working Group under the chairmanship of Gary Collyer (which led to its endorsement by the ICC Banking Commission) is gratefully recognized. In addition, the sponsorship and support of Citibank N.A., The Chase Manhattan Bank, ABN AMRO, Baker & McKenzie, and the National Law Center for Inter-American Free Trade is acknowledged. Perhaps the greatest significance of the ISP is that its creation marks a new chapter in the collaboration between the international banking operations community and the legal community at an international level. In this respect, the active role played in this process by the Secretariat of the United Nations Commission on International Trade Law has been invaluable.

The ISP is drafted as a set of rules intended for use in daily practice. It is not intended to provide introductory information on standbys and their uses. While it is recognized that specific rules would benefit from explanatory comments, such comments are not appended to the ISP because the resulting work would be too cumbersome for daily use. Instead, introductory materials and Official Comments are available in the

Official Commentary on the International Standby Practices (ISP98). For further information on support materials and developments on the ISP and to pose queries, consult the ISP98 website: www.ISP98.com

To address inevitable questions, to provide for official interpretation of the rules, and to assure their proper evolution, the Institute of International Banking Law & Practice, Inc. has created a Council on International Standby Practices which is representative of the several constituencies which have contributed to the ISP and has charged it with the task of maintaining the integrity of the ISP in cooperation with the Institute, the ICC Banking Commission, the IFSA, and various supporting organizations.

James G. Barnes, Baker & McKenzie, Vice Chair
ISP Working Group

Professor James E. Byrne, Director, Institute of International
Banking, Law & Practice, Inc., Chair & Reporter
ISP Working Group

Gary W. Collyer, Chair,
ICC Ad Hoc Working Group & Technical Adviser to the ICC
Banking Commission

Rule 1: General Provisions

Scope, Application, Definitions, and Interpretation of These Rules

1.01 Scope and Application

- a. These Rules are intended to be applied to standby letters of credit (including performance, financial, and direct pay standby letters of credit).
- b. A standby letter of credit or other similar undertaking, however named or described, whether for domestic or international use, may be made subject to these Rules by express reference to them.
- c. An undertaking subject to these Rules may expressly modify or exclude their application.
- d. An undertaking subject to these Rules is hereinafter referred to as a “standby”.

1.02 Relationship to Law and Other Rules

- a. These Rules supplement the applicable law to the extent not prohibited by that law.
- b. These Rules supersede conflicting provisions in any other rules of practice to which a standby letter of credit is also made subject.

1.03 Interpretative Principles

These Rules shall be interpreted as mercantile usage with regard for:

- a. integrity of standbys as reliable and efficient undertakings to pay;
- b. practice and terminology of banks and businesses in day-to-day transactions;
- c. consistency within the worldwide system of banking operations and commerce; and
- d. worldwide uniformity in their interpretation and application.

1.04 Effect of the Rules

Unless the context otherwise requires, or unless expressly modified or excluded, these Rules apply as terms and conditions incorporated into a standby, confirmation, advice,

nomination, amendment, transfer, request for issuance, or other agreement of:

- i. the issuer;
- ii. the beneficiary to the extent it uses the standby;
- iii. any advisor;
- iv. any confirmer;
- v. any person nominated in the standby who acts or agrees to act; and
- vi. the applicant who authorises issuance of the standby or otherwise agrees to the application of these Rules.

1.05 Exclusion of Matters Related to Due Issuance and Fraudulent or Abusive Drawing

These Rules do not define or otherwise provide for:

- a. power or authority to issue a standby;
- b. formal requirements for execution of a standby (e.g. a signed writing); or
- c. defenses to honour based on fraud, abuse, or similar matters. These matters are left to applicable law.

General Principles

1.06 Nature of Standbys

- a. A standby is an irrevocable, independent, documentary, and binding undertaking when issued and need not so state.
- b. Because a standby is irrevocable, an issuer's obligations under a standby cannot be amended or cancelled by the issuer except as provided in the standby or as consented to by the person against whom the amendment or cancellation is asserted.
- c. Because a standby is independent, the enforceability of an issuer's obligations under a standby does not depend on:
 - i. the issuer's right or ability to obtain reimbursement from the applicant;
 - ii. the beneficiary's right to obtain payment from the applicant;
 - iii. a reference in the standby to any reimbursement agreement or underlying transaction; or
 - iv. the issuer's knowledge of performance or breach of any reimbursement agreement or underlying transaction.
- d. Because a standby is documentary, an issuer's obligations depend on the presentation of documents and an examination of required documents on their face.
- e. Because a standby or amendment is binding when issued, it is enforceable against an issuer whether or not the applicant authorised its issuance, the issuer received a fee, or the beneficiary received or relied on the standby or the amendment.

1.07 Independence of the Issuer-Beneficiary Relationship

An issuer's obligations toward the beneficiary are not affected by the issuer's rights and obligations toward the applicant under any applicable agreement, practice, or law.

1.08 Limits to Responsibilities

An issuer is not responsible for:

- a. performance or breach of any underlying transaction;
- b. accuracy, genuineness, or effect of any document presented under the standby;
- c. action or omission of others even if the other person is chosen by the issuer or nominated person; or

- d. observance of law or practice other than that chosen in the standby or applicable at the place of issuance.

Terminology

1.09 Defined Terms

In addition to the meanings given in standard banking practice and applicable law, the following terms have or include the meanings indicated below:

a. Definitions

“Applicant” is a person who applies for issuance of a standby or for whose account it is issued, and includes (i) a person applying in its own name but for the account of another person or (ii) an issuer acting for its own account.

“Beneficiary” is a named person who is entitled to draw under a standby. See Rule 1.11(c)(ii).

“Business Day” means a day on which the place of business at which the relevant act is to be performed is regularly open; and **“Banking Day”** means a day on which the relevant bank is regularly open at the place at which the relevant act is to be performed.

“Confirmer” is a person who, upon an issuer’s nomination to do so, adds to the issuer’s undertaking its own undertaking to honour a standby. See Rule 1.11(c)(i).

“Demand” means, depending on the context, either a request to honour a standby or a document that makes such request.

“Document” means a draft, demand, document of title, investment security, invoice, certificate of default, or any other representation of fact, law, right, or opinion, that upon presentation (whether in a paper or electronic medium), is capable of being examined for compliance with the terms and conditions of a standby.

“Drawing” means, depending on the context, either a demand presented or a demand honoured.

“Expiration Date” means the latest day for a complying presentation provided in a standby.

“Person” includes a natural person, partnership, corporation, limited liability company, government agency, bank, trustee, and any other legal or commercial association or entity.

“Presentation” means, depending on the context, either the act of delivering documents for examination under a standby or the documents so delivered.

“Presenter” is a person who makes a presentation as or on behalf of a beneficiary or nominated person.

“Signature” includes any symbol executed or adopted by a person with a present intent to authenticate a document.

b. Cross References

“Amendment” - Rule 2.06

“Advice” - Rule 2.05

“Approximately” (**“About”** or **“Circa”**) - Rule 3.08(f)

“Assignment of Proceeds” - Rule 6.06

“Automatic Amendment” - Rule 2.06(a)

“Copy” - Rule 4.15(d)

“Cover Instructions” - Rule 5.08

“Honour” - Rule 2.01

“Issuer” - Rule 2.01

“Multiple Presentations” - Rule 3.08(b)

“Nominated Person” - Rule 2.04

“Non-documentary Conditions” - Rule 4.11

“Original” - Rule 4.15(b) & (c)

“Partial Drawing” - Rule 3.08(a)

“Standby” - Rule 1.01(d)

“Transfer” - Rule 6.01

“Transferee Beneficiary” - Rule 1.11(c)(ii)

“Transfer by Operation of Law” - Rule 6.11

c. Electronic Presentations

The following terms in a standby providing for or permitting electronic presentation shall have the following meanings unless the context otherwise requires:

“Electronic Record” means:

- i. a record (information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form);
- ii. communicated by electronic means to a system for receiving, storing, re-transmitting, or otherwise processing information (data, text, images, sounds, codes, computer programs, software, databases, and the like); and
- iii. capable of being authenticated and then examined for compliance with the terms and conditions of the standby.

“Authenticate” means to verify an electronic record by generally accepted procedure or methodology in commercial practice:

- i. the identity of a sender or source, and
- ii. the integrity of or errors in the transmission of information content.

The criteria for assessing the integrity of information in an electronic record is whether the information has remained complete and unaltered, apart from the addition of any endorsement and any change which arises in the normal course of communication, storage, and display.

“Electronic signature” means letters, characters, numbers, or other symbols in electronic form, attached to or logically associated with an electronic record that are executed or adopted by a party with present intent to authenticate an electronic record.

“Receipt” occurs when:

- i. an electronic record enters in a form capable of being processed by the information system designated in the standby, or
- ii. an issuer retrieves an electronic record sent to an information system other than that designated by the issuer.

1.10 Redundant or Otherwise Undesirable Terms

a. A standby should not or need not state that it is:

- i. **unconditional** or **abstract** (if it does, it signifies merely that payment under it is conditioned solely on presentation of specified documents);
- ii. **absolute** (if it does, it signifies merely that it is irrevocable);
- iii. **primary** (if it does, it signifies merely that it is the independent obligation of the issuer);
- iv. **payable from the issuer’s own funds** (if it does, it signifies merely that payment under it does not depend on the availability of applicant funds and is made to

satisfy the issuer's own independent obligation);

- v. **clean** or **payable on demand** (if it does, it signifies merely that it is payable upon presentation of a written demand or other documents specified in the standby).
- b. A standby should not use the term **"and/or"** (if it does it means either or both).
- c. The following terms have no single accepted meaning:
 - i. and shall be disregarded:
 - "callable"**,
 - "divisible"**,
 - "fractionable"**,
 - "indivisible"**, and
 - "transmissible"**.
 - ii. and shall be disregarded unless their context gives them meaning:
 - "assignable"**,
 - "evergreen"**,
 - "reinstate"**, and
 - "revolving"**.

1.11 Interpretation of these Rules

- a. These Rules are to be interpreted in the context of applicable standard practice.
- b. In these Rules, **"standby letter of credit"** refers to the type of independent undertaking for which these Rules were intended, whereas **"standby"** refers to an undertaking subjected to these Rules.
- c. Unless the context otherwise requires:
 - i. **"Issuer"** includes a **"confirmer"** as if the confirmer were a separate issuer and its confirmation were a separate standby issued for the account of the issuer;
 - ii. **"Beneficiary"** includes a person to whom the named beneficiary has effectively transferred drawing rights (**"transferee beneficiary"**);
 - iii. **"Including"** means "including but not limited to";
 - iv. **"A or B"** means "A or B or both"; **"either A or B"** means "A or B, but not both"; and **"A and B"** means "both A and B";
 - v. Words in the singular number include the plural, and in the plural include the singular; and
 - vi. Words of the neuter gender include any gender.
- d. i. Use of the phrase **"unless a standby otherwise states"** or the like in a rule emphasizes that the text of the standby controls over the rule;
- ii. Absence of such a phrase in other rules does not imply that other rules have priority over the text of the standby;
- iii. Addition of the term **"expressly"** or **"clearly"** to the phrase **"unless a standby otherwise states"** or the like emphasizes that the rule should be excluded or modified only by wording in the standby that is specific and unambiguous; and
- iv. While the effect of all of these Rules may be varied by the text of the standby, variations of the effect of some of these Rules may disqualify the standby as an independent undertaking under applicable law.
- e. The phrase **"stated in the standby"** or the like refers to the actual text of a standby (whether as issued or effectively amended) whereas the phrase **"provided in the standby"** or the like refers to both the text of the standby and these Rules as incorporated.

Rule 2: Obligation

2.01 Undertaking to Honour by Issuer and Any Confirmer to Beneficiary

- a. An issuer undertakes to the beneficiary to honour a presentation that appears on its face to comply with the terms and conditions of the standby in accordance with these Rules supplemented by standard standby practice.
- b. An issuer honours a complying presentation made to it by paying the amount demanded of it at sight, unless the standby provides for honour:
 - i. by acceptance of a draft drawn by the beneficiary on the issuer, in which case the issuer honours by:
 - (a) timely accepting the draft; and
 - (b) thereafter paying the holder of the draft on presentation of the accepted draft on or after its maturity.
 - ii. by deferred payment of a demand made by the beneficiary on the issuer, in which case the issuer honours by:
 - (a) timely incurring a deferred payment obligation; and
 - (b) thereafter paying at maturity.
 - iii. by negotiation, in which case the issuer honours by paying the amount demanded at sight without recourse.
- c. An issuer acts in a timely manner if it pays at sight, accepts a draft, or undertakes a deferred payment obligation (or if it gives notice of dishonour) within the time permitted for examining the presentation and giving notice of dishonour.
- d. i. A confirmer undertakes to honour a complying presentation made to it by paying the amount demanded of it at sight or, if the standby so states, by another method of honour consistent with the issuer's undertaking.
- ii. If the confirmation permits presentation to the issuer, then the confirmer undertakes also to honour upon the issuer's wrongful dishonour by performing as if the presentation had been made to the confirmer.
- iii. If the standby permits presentation to the confirmer, then the issuer undertakes also to honour upon the confirmer's wrongful dishonour by performing as if the presentation had been made to the issuer.
- e. An issuer honours by paying in immediately available funds in the currency designated in the standby unless the standby states it is payable by:
 - i. payment of a monetary unit of account, in which case the undertaking is to pay in that unit of account; or
 - ii. delivery of other items of value, in which case the undertaking is to deliver those items.

2.02 Obligation of Different Branches, Agencies, or Other Offices

For the purposes of these Rules, an issuer's branch, agency, or other office acting or undertaking to act under a standby in a capacity other than as issuer is obligated in that capacity only and shall be treated as a different person.

2.03 Conditions to Issuance

A standby is issued when it leaves an issuer's control unless it clearly specifies that it is not then "issued" or "enforceable". Statements that a standby is not "available", "operative", "effective", or the like do not affect its irrevocable and binding nature at the time it leaves the issuer's control.

2.04 Nomination

- a. A standby may nominate a person to advise, receive a presentation, effect a transfer, confirm, pay, negotiate, incur a deferred payment obligation, or accept a draft.
- b. Nomination does not obligate the nominated person to act except to the extent that the nominated person undertakes to act.
- c. A nominated person is not authorised to bind the person making the nomination.

2.05 Advice of Standby or Amendment

- a. Unless an advice states otherwise, it signifies that:
 - i. the advisor has checked the apparent authenticity of the advised message in accordance with standard letter of credit practice; and
 - ii. the advice accurately reflects what has been received.
- b. A person who is requested to advise a standby and decides not to do so should notify the requesting party.

2.06 When an Amendment is Authorised and Binding

- a. If a standby expressly states that it is subject to “**automatic amendment**” by an increase or decrease in the amount available, an extension of the expiration date, or the like, the amendment is effective automatically without any further notification or consent beyond that expressly provided for in the standby. (Such an amendment may also be referred to as becoming effective “**without amendment**”.)
- b. If there is no provision for automatic amendment, an amendment binds:
 - i. the issuer when it leaves the issuer’s control; and
 - ii. the confirmer when it leaves the confirmer’s control, unless the confirmer indicates that it does not confirm the amendment.
- c. If there is no provision for automatic amendment:
 - i. the beneficiary must consent to the amendment for it to be binding;
 - ii. the beneficiary’s consent must be made by an express communication to the person advising the amendment unless the beneficiary presents documents which comply with the standby as amended and which would not comply with the standby prior to such amendment; and
 - iii. an amendment does not require the applicant’s consent to be binding on the issuer, the confirmer, or the beneficiary.
- d. Consent to only part of an amendment is a rejection of the entire amendment.

2.07 Routing of Amendments

- a. An issuer using another person to advise a standby must advise all amendments to that person.
- b. An amendment or cancellation of a standby does not affect the issuer’s obligation to a nominated person that has acted within the scope of its nomination before receipt of notice of the amendment or cancellation.
- c. Non-extension of an automatically extendable (renewable) standby does not affect an issuer’s obligation to a nominated person who has acted within the scope of its nomination before receipt of a notice of non-extension.

Rule 3: Presentation

3.01 Complying Presentation under a Standby

A standby should indicate the time, place and location within that place, person to whom, and medium in which presentation should be made. If so, presentation must be so made in order to comply. To the extent that a standby does not so indicate, presentation must be made in accordance with these Rules in order to be complying.

3.02 What Constitutes a Presentation

The receipt of a document required by and presented under a standby constitutes a presentation requiring examination for compliance with the terms and conditions of the standby even if not all of the required documents have been presented.

3.03 Identification of Standby

- a. A presentation must identify the standby under which the presentation is made.
- b. A presentation may identify the standby by stating the complete reference number of the standby and the name and location of the issuer or by attaching the original or a copy of the standby.
- c. If the issuer cannot determine from the face of a document received that it should be processed under a standby or cannot identify the standby to which it relates, presentation is deemed to have been made on the date of identification.

3.04 Where and to Whom Complying Presentation Made

- a. To comply, a presentation must be made at the place and any location at that place indicated in the standby or provided in these Rules.
- b. If no place of presentation to the issuer is indicated in the standby, presentation to the issuer must be made at the place of business from which the standby was issued.
- c. If a standby is confirmed, but no place for presentation is indicated in the confirmation, presentation for the purpose of obligating the confirmer (and the issuer) must be made at the place of business of the confirmer from which the confirmation was issued or to the issuer.
- d. If no location at a place of presentation is indicated (such as department, floor, room, station, mail stop, post office box, or other location), presentation may be made to:
 - i. the general postal address indicated in the standby;
 - ii. any location at the place designated to receive deliveries of mail or documents; or
 - iii. any person at the place of presentation actually or apparently authorised to receive it.

3.05 When Timely Presentation Made

- a. A presentation is timely if made at any time after issuance and before expiry on the expiration date.
- b. A presentation made after the close of business at the place of presentation is deemed to have been made on the next business day.

3.06 Complying Medium of Presentation

- a. To comply, a document must be presented in the medium indicated in the standby.
- b. Where no medium is indicated, to comply a document must be presented as a paper document, unless only a demand is required, in which case:
 - i. a demand that is presented via S.W.I.F.T., tested telex,

- or other similar authenticated means by a beneficiary that is a S.W.I.F.T. participant or a bank complies; otherwise
- ii. a demand that is not presented as a paper document does not comply unless the issuer permits, in its sole discretion, the use of that medium.
- c. A document is not presented as a paper document if it is communicated by electronic means even if the issuer or nominated person receiving it generates a paper document from it.
- d. Where presentation in an electronic medium is indicated, to comply a document must be presented as an electronic record capable of being authenticated by the issuer or nominated person to whom it is presented.

3.07 Separateness of Each Presentation

- a. Making a non-complying presentation, withdrawing a presentation, or failing to make any one of a number of scheduled or permitted presentations does not waive or otherwise prejudice the right to make another timely presentation or a timely re-presentation whether or not the standby prohibits partial or multiple drawings or presentations.
- b. Wrongful dishonour of a complying presentation does not constitute dishonour of any other presentation under a standby or repudiation of the standby.
- c. Honour of a non-complying presentation, with or without notice of its non-compliance, does not waive requirements of a standby for other presentations.

3.08 Partial Drawing and Multiple Presentations; Amount of Drawings

- a. A presentation may be made for less than the full amount available ("partial drawing").
- b. More than one presentation ("multiple presentations") may be made.
- c. The statement "partial drawings prohibited" or a similar expression means that a presentation must be for the full amount available.
- d. The statement "multiple drawings prohibited" or a similar expression means that only one presentation may be made and honoured but that it may be for less than the full amount available.
- e. If a demand exceeds the amount available under the standby, the drawing is discrepant. Any document other than the demand stating an amount in excess of the amount demanded is not discrepant for that reason.
- f. Use of "approximately", "about", "circa", or a similar word permits a tolerance not to exceed 10% more or 10% less of the amount to which such word refers.

3.09 Extend or Pay

A beneficiary's request to extend the expiration date of the standby or, alternatively, to pay the amount available under it:

- a. is a presentation demanding payment under the standby, to be examined as such in accordance with these Rules; and
- b. implies that the beneficiary:
 - i. consents to the amendment to extend the expiry date to the date requested;
 - ii. requests the issuer to exercise its discretion to seek the approval of the applicant and to issue that amendment;

- iii. upon issuance of that amendment, retracts its demand for payment; and
- iv. consents to the maximum time available under these Rules for examination and notice of dishonour.

3.10 No Notice of Receipt of Presentation

An issuer is not required to notify the applicant of receipt of a presentation under the standby.

3.11 Issuer Waiver and Applicant Consent to Waiver of Presentation Rules

In addition to other discretionary provisions in a standby or these Rules, an issuer may, in its sole discretion, without notice to or consent of the applicant and without effect on the applicant's obligations to the issuer, waive

- a. the following Rules and any similar terms stated in the standby which are primarily for the issuer's benefit or operational convenience:
 - i. treatment of documents received, at the request of the presenter, as having been presented at a later date (Rule 3.02);
 - ii. identification of a presentation to the standby under which it is presented (Rule 3.03(a));
 - iii. where and to whom presentation is made (Rule 3.04(b), (c), and (d)), except the country of presentation stated in the standby; or
 - iv. treatment of a presentation made after the close of business as if it were made on the next business day (Rule 3.05(b)).
- b. the following Rule but not similar terms stated in the standby:
 - i. a required document dated after the date of its stated presentation (Rule 4.06); or
 - ii. the requirement that a document issued by the beneficiary be in the language of the standby (Rule 4.04).
- c. the following Rule relating to the operational integrity of the standby only in so far as the bank is in fact dealing with the true beneficiary: acceptance of a demand in an electronic medium (Rule 3.06(b)).

Waiver by the confirmer requires the consent of the issuer with respect to paragraphs (b) and (c) of this Rule.

3.12 Original Standby Lost, Stolen, Mutilated, or Destroyed

- a. If an original standby is lost, stolen, mutilated, or destroyed, the issuer need not replace it or waive any requirement that the original be presented under the standby.
- b. If the issuer agrees to replace an original standby or to waive a requirement for its presentation, it may provide a replacement or copy to the beneficiary without affecting the applicant's obligations to the issuer to reimburse, but, if it does so, the issuer must mark the replacement or copy as such. The issuer may, in its sole discretion, require indemnities satisfactory to it from the beneficiary and assurances from nominated persons that no payment has been made.

Closure on Expiry Date

3.13 Expiration Date on a Non-Business Day

- a. If the last day for presentation stated in a standby (whether stated to be the expiration date or the date by which documents must be received) is not a business day of the issuer or nominated person where presentation is to be made,

then presentation made there on the first following business day shall be deemed timely.

- b. A nominated person to whom such a presentation is made must so notify the issuer.

3.14 Closure on a Business Day and Authorization of Another Reasonable Place for Presentation

- a. If on the last business day for presentation the place for presentation stated in a standby is for any reason closed and presentation is not timely made because of the closure, then the last day for presentation is automatically extended to the day occurring thirty calendar days after the place for presentation re-opens for business, unless the standby otherwise provides.
- b. Upon or in anticipation of closure of the place of presentation, an issuer may authorise another reasonable place for presentation in the standby or in a communication received by the beneficiary. If it does so, then
 - i. presentation must be made at that reasonable place; and
 - ii. if the communication is received fewer than thirty calendar days before the last day for presentation and for that reason presentation is not timely made, the last day for presentation is automatically extended to the day occurring thirty calendar days after the last day for presentation.

Rule 4: Examination

4.01 Examination for Compliance

- a. Demands for honour of a standby must comply with the terms and conditions of the standby.
- b. Whether a presentation appears to comply is determined by examining the presentation on its face against the terms and conditions stated in the standby as interpreted and supplemented by these Rules which are to be read in the context of standard standby practice.

4.02 Non-Examination of Extraneous Documents

Documents presented which are not required by the standby need not be examined and, in any event, shall be disregarded for purposes of determining compliance of the presentation. They may without responsibility be returned to the presenter or passed on with the other documents presented.

4.03 Examination for Inconsistency

An issuer or nominated person is required to examine documents for inconsistency with each other only to the extent provided in the standby.

4.04 Language of Documents

The language of all documents issued by the beneficiary is to be that of the standby.

4.05 Issuer of Documents

Any required document must be issued by the beneficiary unless the standby indicates that the document is to be issued by a third person or the document is of a type that standard standby practice requires to be issued by a third person.

4.06 Date of Documents

The issuance date of a required document may be earlier but not later than the date of its presentation.

4.07 Required Signature on a Document

- a. A required document need not be signed unless the standby indicates that the document must be signed or the document is of a type that standard standby practice requires be signed.
- b. A required signature may be made in any manner that corresponds to the medium in which the signed document is presented.
- c. Unless a standby specifies:
 - i. the name of a person who must sign a document, any signature or authentication will be regarded as a complying signature.
 - ii. the status of a person who must sign, no indication of status is necessary.
- d. If a standby specifies that a signature must be made by:
 - i. a named natural person without requiring that the signer's status be identified, a signature complies that appears to be that of the named person;
 - ii. a named legal person or government agency without identifying who is to sign on its behalf or its status, any signature complies that appears to have been made on behalf of the named legal person or government agency; or
 - iii. a named natural person, legal person, or government agency requiring the status of the signer be indicated, a signature complies which appears to be that of the named natural person, legal person, or government agency and indicates its status.

4.08 Demand Document Implied

If a standby does not specify any required document, it will still be deemed to require a documentary demand for payment.

4.09 Identical Wording and Quotation Marks

If a standby requires:

- a. a statement without specifying precise wording, then the wording in the document presented must appear to convey the same meaning as that required by the standby;
- b. specified wording by the use of quotation marks, blocked wording, or an attached exhibit or form, then typographical errors in spelling, punctuation, spacing, or the like that are apparent when read in context are not required to be duplicated and blank lines or spaces for data may be completed in any manner not inconsistent with the standby; or
- c. specified wording by the use of quotation marks, blocked wording, or an attached exhibit or form, and also provides that the specified wording be "exact" or "identical", then the wording in the documents presented must duplicate the specified wording, including typographical errors in spelling, punctuation, spacing and the like, as well as blank lines and spaces for data must be exactly reproduced.

4.10 Applicant Approval

A standby should not specify that a required document be issued, signed, or counter-signed by the applicant. However, if the standby includes such a requirement, the issuer may not waive the requirement and is not responsible for the applicant's withholding of the document or signature.

4.11 Non-Documentary Terms or Conditions

- a. A standby term or condition which is non-documentary must be disregarded whether or not it affects the issuer's obligation to treat a presentation as complying or to treat the standby as issued, amended, or terminated.
- b. Terms or conditions are non-documentary if the standby does not require presentation of a document in which they are to be evidenced and if their fulfillment cannot be determined by the issuer from the issuer's own records or within the issuer's normal operations.
- c. Determinations from the issuer's own records or within the issuer's normal operations include determinations of:
 - i. when, where, and how documents are presented or otherwise delivered to the issuer;
 - ii. when, where, and how communications affecting the standby are sent or received by the issuer, beneficiary, or any nominated person;
 - iii. amounts transferred into or out of accounts with the issuer; and
 - iv. amounts determinable from a published index (e.g., if a standby provides for determining amounts of interest accruing according to published interest rates).
- d. An issuer need not re-compute a beneficiary's computations under a formula stated or referenced in a standby except to the extent that the standby so provides.

4.12 Formality of Statements in Documents

- a. A required statement need not be accompanied by a solemnity, officialization, or any other formality.
- b. If a standby provides for the addition of a formality to a required statement by the person making it without specifying form or content, the statement complies if it indicates that it was declared, averred, warranted, attested, sworn under oath, affirmed, certified, or the like.
- c. If a standby provides for a statement to be witnessed by another person without specifying form or content, the witnessed statement complies if it appears to contain a signature of a person other than the beneficiary with an indication that the person is acting as a witness.
- d. If a standby provides for a statement to be countersigned, legalized, visaed, or the like by a person other than the beneficiary acting in a governmental, judicial, corporate, or other representative capacity without specifying form or content, the statement complies if it contains the signature of a person other than the beneficiary and includes an indication of that person's representative capacity and the organization on whose behalf the person has acted.

4.13 No Responsibility to Identify Beneficiary

Except to the extent that a standby requires presentation of an electronic record:

- a. a person honouring a presentation has no obligation to the applicant to ascertain the identity of any person making a presentation or any assignee of proceeds;
- b. payment to a named beneficiary, transferee, an acknowledged assignee, successor by operation of law, to an account or account number stated in the standby or in a cover instruction from the beneficiary or nominated person fulfills the obligation under the standby to effect payment.

4.14 Name of Acquired or Merged Issuer or Confirmer

If the issuer or confirmer is reorganized, merged, or changes its name, any required reference by name to the issuer or confirmer in the documents presented may be to it or its successor.

4.15 Original, Copy, and Multiple Documents

- a. A presented document must be an original.
- b. Presentation of an electronic record, where an electronic presentation is permitted or required, is deemed to be an "original".
- c.
 - i. A presented document is deemed to be an original unless it appears on its face to have been reproduced from an original.
 - ii. A document which appears to have been reproduced from an original is deemed to be an original if the signature or authentication appears to be original.
- d. A standby that requires presentation of a "copy" permits presentation of either an original or copy unless the standby states that only a copy be presented or otherwise addresses the disposition of all originals.
- e. If multiples of the same document are requested, only one must be an original unless:
 - i. "duplicate originals" or "multiple originals" are requested in which case all must be originals; or
 - ii. "two copies", "two-fold", or the like are requested in which case either originals or copies may be presented.

Standby Document Types

4.16 Demand for Payment

- a. A demand for payment need not be separate from the beneficiary's statement or other required document.
- b. If a separate demand is required, it must contain:
 - i. a demand for payment from the beneficiary directed to the issuer or nominated person;
 - ii. a date indicating when the demand was issued;
 - iii. the amount demanded; and
 - iv. the beneficiary's signature.
- c. A demand may be in the form of a draft or other instruction, order, or request to pay. If a standby requires presentation of a "draft" or "bill of exchange", that draft or bill of exchange need not be in negotiable form unless the standby so states.

4.17 Statement of Default or Other Drawing Event

If a standby requires a statement, certificate, or other recital of a default or other drawing event and does not specify content, the document complies if it contains:

- a. a representation to the effect that payment is due because a drawing event described in the standby has occurred;
- b. a date indicating when it was issued; and
- c. the beneficiary's signature.

4.18 Negotiable Documents

If a standby requires presentation of a document that is transferable by endorsement and delivery without stating whether, how, or to whom endorsement must be made, then the document may be presented without endorsement, or, if endorsed, the endorsement may be in blank and, in any event,

the document may be issued or negotiated with or without recourse.

4.19 Legal or Judicial Documents

If a standby requires presentation of a government-issued document, a court order, an arbitration award, or the like, a document or a copy is deemed to comply if it appears to be:

- i. issued by a government agency, court, tribunal, or the like;
- ii. suitably titled or named;
- iii. signed;
- iv. dated; and
- v. originally certified or authenticated by an official of a government agency, court, tribunal, or the like.

4.20 Other Documents

- a. If a standby requires a document other than one whose content is specified in these Rules without specifying the issuer, data content, or wording, a document complies if it appears to be appropriately titled or to serve the function of that type of document under standard standby practice.
- b. A document presented under a standby is to be examined in the context of standby practice under these Rules even if the document is of a type (such as a commercial invoice, transport documents, insurance documents or the like) for which the Uniform Customs and Practice for Documentary Credits contains detailed rules.

4.21 Request to Issue Separate Undertaking

If a standby requests that the beneficiary of the standby issue its own separate undertaking to another (whether or not the standby recites the text of that undertaking):

- a. the beneficiary receives no rights other than its rights to draw under the standby even if the issuer pays a fee to the beneficiary for issuing the separate undertaking;
- b. neither the separate undertaking nor any documents presented under it need be presented to the issuer; and
- c. if originals or copies of the separate undertaking or documents presented under it are received by the issuer although not required to be presented as a condition to honour of the standby:
 - i. the issuer need not examine, and, in any event, shall disregard their compliance or consistency with the standby, with the beneficiary's demand under the standby, or with the beneficiary's separate undertaking; and
 - ii. the issuer may without responsibility return them to the presenter or forward them to the applicant with the presentation.

Rule 5: Notice, Preclusion, and Disposition of Documents

5.01 Timely Notice of Dishonour

- a. Notice of dishonour must be given within a time after presentation of documents which is not unreasonable.
 - i. Notice given within three business days is deemed to be not unreasonable and beyond seven business days is deemed to be unreasonable.
 - ii. Whether the time within which notice is given is unreasonable does not depend upon an imminent deadline for presentation.
 - iii. The time for calculating when notice of dishonour must

be given begins on the business day following the business day of presentation.

- iv. Unless a standby otherwise expressly states a shortened time within which notice of dishonour must be given, the issuer has no obligation to accelerate its examination of a presentation.
- b. i. The means by which a notice of dishonour is to be given is by telecommunication, if available, and, if not, by another available means which allows for prompt notice.
- ii. If notice of dishonour is received within the time permitted for giving the notice, then it is deemed to have been given by prompt means.
- c. Notice of dishonour must be given to the person from whom the documents were received (whether the beneficiary, nominated person, or person other than a delivery person) except as otherwise requested by the presenter.

5.02 Statement of Grounds for Dishonour

A notice of dishonour shall state all discrepancies upon which dishonour is based.

5.03 Failure to Give Timely Notice of Dishonour

- a. Failure to give notice of a discrepancy in a notice of dishonour within the time and by the means specified in the standby or these rules precludes assertion of that discrepancy in any document containing the discrepancy that is retained or re-presented, but does not preclude assertion of that discrepancy in any different presentation under the same or a separate standby.
- b. Failure to give notice of dishonour or acceptance or acknowledgment that a deferred payment undertaking has been incurred obligates the issuer to pay at maturity.

5.04 Notice of Expiry

Failure to give notice that a presentation was made after the expiration date does not preclude dishonour for that reason.

5.05 Issuer Request for Applicant Waiver without Request by Presenter

If the issuer decides that a presentation does not comply and if the presenter does not otherwise instruct, the issuer may, in its sole discretion, request the applicant to waive non-compliance or otherwise to authorise honour within the time available for giving notice of dishonour but without extending it. Obtaining the applicant's waiver does not obligate the issuer to waive non-compliance.

5.06 Issuer Request for Applicant Waiver upon Request of Presenter

If, after receipt of notice of dishonour, a presenter requests that the presented documents be forwarded to the issuer or that the issuer seek the applicant's waiver:

- a. no person is obligated to forward the discrepant documents or seek the applicant's waiver;
- b. the presentation to the issuer remains subject to these Rules unless departure from them is expressly consented to by the presenter; and
- c. if the documents are forwarded or if a waiver is sought:
 - i. the presenter is precluded from objecting to the discrepancies notified to it by the issuer;

- ii. the issuer is not relieved from examining the presentation under these Rules;
- iii. the issuer is not obligated to waive the discrepancy even if the applicant waives it; and
- iv. the issuer must hold the documents until it receives a response from the applicant or is requested by the presenter to return the documents, and if the issuer receives no such response or request within ten business days of its notice of dishonour, it may return the documents to the presenter.

5.07 Disposition of Documents

Dishonoured documents must be returned, held, or disposed of as reasonably instructed by the presenter. Failure to give notice of the disposition of documents in the notice of dishonour does not preclude the issuer from asserting any defense otherwise available to it against honour.

5.08 Cover Instructions/Transmittal Letter

- a. Instructions accompanying a presentation made under a standby may be relied on to the extent that they are not contrary to the terms or conditions of the standby, the demand, or these Rules.
- b. Representations made by a nominated person accompanying a presentation may be relied upon to the extent that they are not contrary to the terms or conditions of a standby or these Rules.
- c. Notwithstanding receipt of instructions, an issuer or nominated person may pay, give notice, return the documents, or otherwise deal directly with the presenter.
- d. A statement in the cover letter that the documents are discrepant does not relieve the issuer from examining the presentation for compliance.

5.09 Applicant Notice of Objection

- a. An applicant must timely object to an issuer's honour of a noncomplying presentation by giving timely notice by prompt means.
- b. An applicant acts timely if it objects to discrepancies by sending a notice to the issuer stating the discrepancies on which the objection is based within a time after the applicant's receipt of the documents which is not unreasonable.
- c. Failure to give a timely notice of objection by prompt means precludes assertion by the applicant against the issuer of any discrepancy or other matter apparent on the face of the documents received by the applicant, but does not preclude assertion of that objection to any different presentation under the same or a different standby.

Rule 6: Transfer, Assignment, and Transfer by Operation of Law

Transfer of Drawing Rights

6.01 Request to Transfer Drawing Rights

Where a beneficiary requests that an issuer or nominated person honour a drawing from another person as if that person were the beneficiary, these Rules on transfer of drawing rights ("transfer") apply.

6.02 When Drawing Rights are Transferable

- a. A standby is not transferable unless it so states.
- b. A standby that states that it is transferable without further provision means that drawing rights:
 - i. may be transferred in their entirety more than once;
 - ii. may not be partially transferred; and
 - iii. may not be transferred unless the issuer (including the confirmer) or another person specifically nominated in the standby agrees to and effects the transfer requested by the beneficiary.

6.03 Conditions to Transfer

An issuer of a transferable standby or a nominated person need not effect a transfer unless:

- a. it is satisfied as to the existence and authenticity of the original standby; and
- b. the beneficiary submits or fulfills:
 - i. a request in a form acceptable to the issuer or nominated person including the effective date of the transfer and the name and address of the transferee;
 - ii. the original standby;
 - iii. verification of the signature of the person signing for the beneficiary;
 - iv. verification of the authority of the person signing for the beneficiary;
 - v. payment of the transfer fee; and
 - vi. any other reasonable requirements.

6.04 Effect of Transfer on Required Documents

Where there has been a transfer of drawing rights in their entirety:

- a. a draft or demand must be signed by the transferee beneficiary; and
- b. the name of the transferee beneficiary may be used in place of the name of the transferor beneficiary in any other required document.

6.05 Reimbursement for Payment Based on a Transfer

An issuer or nominated person paying under a transfer pursuant to Rule 6.03(a), (b)(i), and (b)(ii) is entitled to reimbursement as if it had made payment to the beneficiary.

Acknowledgement of Assignment of Proceeds

6.06 Assignment of Proceeds

Where an issuer or nominated person is asked to acknowledge a beneficiary's request to pay an assignee all or part of any proceeds of the beneficiary's drawing under the standby, these Rules on acknowledgment of an assignment of proceeds apply except where applicable law otherwise requires.

6.07 Request for Acknowledgment

- a. Unless applicable law otherwise requires, an issuer or nominated person
 - i. is not obligated to give effect to an assignment of proceeds which it has not acknowledged; and
 - ii. is not obligated to acknowledge the assignment.
- b. If an assignment is acknowledged:
 - i. the acknowledgment confers no rights with respect to the standby to the assignee who is only entitled to the

- proceeds assigned, if any, and whose rights may be affected by amendment or cancellation; and
- ii. the rights of the assignee are subject to:
- (a) the existence of any net proceeds payable to the beneficiary by the person making the acknowledgment;
 - (b) rights of nominated persons and transferee beneficiaries;
 - (c) rights of other acknowledged assignees; and
 - (d) any other rights or interests that may have priority under applicable law.

6.08 Conditions to Acknowledgment of Assignment of Proceeds

An issuer or nominated person may condition its acknowledgment on receipt of:

- a. the original standby for examination or notation;
- b. verification of the signature of the person signing for the beneficiary;
- c. verification of the authority of the person signing for the beneficiary;
- d. an irrevocable request signed by the beneficiary for acknowledgment of the assignment that includes statements, covenants, indemnities, and other provisions which may be contained in the issuer's or nominated person's required form requesting acknowledgment of assignment, such as:
 - i. the identity of the affected drawings if the standby permits multiple drawings;
 - ii. the full name, legal form, location, and mailing address of the beneficiary and the assignee;
 - iii. details of any request affecting the method of payment or delivery of the standby proceeds;
 - iv. limitation on partial assignments and prohibition of successive assignments;
 - v. statements regarding the legality and relative priority of the assignment; or
 - vi. right of recovery by the issuer or nominated person of any proceeds received by the assignee that are recoverable from the beneficiary;
- e. payment of a fee for the acknowledgment; and
- f. fulfillment of other reasonable requirements.

6.09 Conflicting Claims to Proceeds

If there are conflicting claims to proceeds, then payment to an acknowledged assignee may be suspended pending resolution of the conflict.

6.10 Reimbursement for Payment Based on an Assignment

An issuer or nominated person paying under an acknowledged assignment pursuant to Rule 6.08(a) and (b) is entitled to reimbursement as if it had made payment to the beneficiary. If the beneficiary is a bank, the acknowledgment may be based solely upon an authenticated communication.

Transfer by Operation of Law

6.11 Transferee by Operation of Law

Where an heir, personal representative, liquidator, trustee, receiver, successor corporation, or similar person who claims to be designated by law to succeed to the interests of a beneficiary presents documents in its own name as if it were

the authorised transferee of the beneficiary, these Rules on transfer by operation of law apply.

6.12 Additional Document in Event of Drawing in Successor's Name

A claimed successor may be treated as if it were an authorised transferee of a beneficiary's drawing rights in their entirety if it presents an additional document or documents which appear to be issued by a public official or representative (including a judicial officer) and indicate:

- a. that the claimed successor is the survivor of a merger, consolidation, or similar action of a corporation, limited liability company, or other similar organization;
- b. that the claimed successor is authorised or appointed to act on behalf of the named beneficiary or its estate because of an insolvency proceeding;
- c. that the claimed successor is authorised or appointed to act on behalf of the named beneficiary because of death or incapacity; or
- d. that the name of the named beneficiary has been changed to that of the claimed successor.

6.13 Suspension of Obligations upon Presentation by Successor

An issuer or nominated person which receives a presentation from a claimed successor which complies in all respects except for the name of the beneficiary:

- a. may request in a manner satisfactory as to form and substance:
 - i. a legal opinion;
 - ii. an additional document referred to in Rule 6.12 (Additional Document in Event of Drawing in Successor's Name) from a public official;
 - iii. statements, covenants, and indemnities regarding the status of the claimed successor as successor by operation of law;
 - iv. payment of fees reasonably related to these determinations; and
 - v. anything which may be required for a transfer under Rule 6.03 (Conditions to Transfer) or an acknowledgment of assignment of proceeds under Rule 6.08 (Conditions to Acknowledgment of Assignment of Proceeds);

but such documentation shall not constitute a required document for purposes of expiry of the standby.

- b. Until the issuer or nominated person receives the requested documentation, its obligation to honour or give notice of dishonour is suspended, but any deadline for presentation of required documents is not thereby extended.

6.14 Reimbursement for Payment Based on a Transfer by Operation of Law

An issuer or nominated person paying under a transfer by operation of law pursuant to Rule 6.12 (Additional Document in Event of Drawing in Successor's Name) is entitled to reimbursement as if it had made payment to the beneficiary.

Rule 7: Cancellation

7.01 When an Irrevocable Standby is Cancelled or Terminated

A beneficiary's rights under a standby may not be cancelled without its consent. Consent may be evidenced in writing or

by an action such as return of the original standby in a manner which implies that the beneficiary consents to cancellation. A beneficiary's consent to cancellation is irrevocable when communicated to the issuer.

7.02 Issuer's Discretion Regarding a Decision to Cancel

Before acceding to a beneficiary's authorization to cancel and treating the standby as cancelled for all purposes, an issuer may require in a manner satisfactory as to form and substance:

- a. the original standby;
- b. verification of the signature of the person signing for the beneficiary;
- c. verification of the authorization of the person signing for the beneficiary;
- d. a legal opinion;
- e. an irrevocable authority signed by the beneficiary for cancellation that includes statements, covenants, indemnities, and similar provisions contained in a required form;
- f. satisfaction that the obligation of any confirmer has been cancelled;
- g. satisfaction that there has not been a transfer or payment by any nominated person; and
- h. any other reasonable measure.

Rule 8: Reimbursement Obligations

8.01 Right to Reimbursement

- a. Where payment is made against a complying presentation in accordance with these Rules, reimbursement must be made by:
 - i. an applicant to an issuer requested to issue a standby; and
 - ii. an issuer to a person nominated to honour or otherwise give value.
- b. An applicant must indemnify the issuer against all claims, obligations, and responsibilities (including attorney's fees) arising out of:
 - i. the imposition of law or practice other than that chosen in the standby or applicable at the place of issuance;
 - ii. the fraud, forgery, or illegal action of others; or
 - iii. the issuer's performance of the obligations of a confirmer that wrongfully dishonours a confirmation.
- c. This Rule supplements any applicable agreement, course of dealing, practice, custom or usage providing for reimbursement or indemnification on lesser or other grounds.

8.02 Charges for Fees and Costs

- a. An applicant must pay the issuer's charges and reimburse the issuer for any charges that the issuer is obligated to pay to persons nominated with the applicant's consent to advise, confirm, honour, negotiate, transfer, or to issue a separate undertaking.
- b. An issuer is obligated to pay the charges of other persons:
 - i. if they are payable in accordance with the terms of the standby; or
 - ii. if they are the reasonable and customary fees and expenses of a person requested by the issuer to advise, honour, negotiate, transfer, or to issue a separate undertaking, and they are unrecovered and unrecoverable

from the beneficiary or other presenter because no demand is made under the standby.

8.03 Refund of Reimbursement

A nominated person that obtains reimbursement before the issuer timely dishonours the presentation must refund the reimbursement with interest if the issuer dishonours. The refund does not preclude the nominated person's wrongful dishonour claims.

8.04 Bank-to-Bank Reimbursement

Any instruction or authorization to obtain reimbursement from another bank is subject to the International Chamber of Commerce standard rules for bank-to-bank reimbursements.

Rule 9: Timing

9.01 Duration of Standby

A standby must:

- a. contain an expiry date; or
- b. permit the issuer to terminate the standby upon reasonable prior notice or payment.

9.02 Effect of Expiration on Nominated Person

The rights of a nominated person that acts within the scope of its nomination are not affected by the subsequent expiry of the standby.

9.03 Calculation of Time

- a. A period of time within which an action must be taken under these Rules begins to run on the first business day following the business day when the action could have been undertaken at the place where the action should have been undertaken.
- b. An extension period starts on the calendar day following the stated expiry date even if either day falls on a day when the issuer is closed.

9.04 Time of Day of Expiration

If no time of day is stated for expiration, it occurs at the close of business at the place of presentation.

9.05 Retention of Standby

Retention of the original standby does not preserve any rights under the standby after the right to demand payment ceases.

Rule 10: Syndication/Participation

10.01 Syndication

If a standby with more than one issuer does not state to whom presentation may be made, presentation may be made to any issuer with binding effect on all issuers.

10.02 Participation

- a. Unless otherwise agreed between an applicant and an issuer, the issuer may sell participations in the issuer's rights against the applicant and any presenter and may disclose relevant applicant information in confidence to potential participants.
- b. An issuer's sale of participations does not affect the obligations of the issuer under the standby or create any rights or obligations between the beneficiary and any participant.





LETTERS OF CREDIT

Glossary

Designed as a convenient reference tool, this glossary provides practical definitions of the terms used in this booklet.

Acceptance - The act of placing the word “accepted” across the face of a draft, followed by the date and signature of the acceptor.

Acceptance Draft - A time draft which has been accepted, thereby bearing the unconditional obligation of the party which has accepted to pay the draft at maturity.

Accepting Bank - The bank upon which a draft is drawn and which “accepts” the draft (see Acceptance).

Advising Bank - A bank, usually in the Beneficiary’s country, which notifies the Beneficiary that another bank has issued a Letter of Credit in its favor.

Air Waybill - A non-negotiable contract of carriage for air transportation between an air carrier and a shipper, or an air carrier and an air freight forwarder.

Amendment - Any change to the terms and conditions of a Letter of Credit.

Applicant - The party that arranges for a Letter of Credit to be issued, typically the buyer in a commercial transaction or the borrower in a financial transaction.

Application - The agreement between the Applicant and the Issuing Bank describing the terms and conditions to be included in the Letter of Credit and the arrangements for the Applicant to reimburse the Issuing Bank.

Assignment of Proceeds - Agreement of the Beneficiary to pay all or a portion of the proceeds of a drawing under a Letter of Credit to a third party (Assignee) to be acknowledged by the Paying Bank.

“At Sight” - A term indicating that an instrument is to be paid upon the bank’s determination that the documents comply with the terms and conditions of the **Letter of Credit** (see Draft).

Authority to Pay - A form of a Revocable Letter of Credit whose terms usually require drafts be drawn on a bank in the Beneficiary’s country.

Automatic Extension Clause - A provision in the Letter of Credit which allows the expiration date to automatically extend for an additional period of time without requiring an amendment (also known as an Evergreen Clause).

Banker’s Acceptance - A time draft drawn on and accepted by the Drawee Bank (see Acceptance and Accepting Bank). It is usually used for short-term financing of goods in the Channels of Trade.

Beneficiary - The person in whose favor a Letter of Credit is issued, typically the seller in a commercial transaction or the creditor in a financial transaction.

Bill of Exchange - See Draft.

Bill of Lading - A document, generally issued by a carrier to a shipper, that serves a threefold purpose: 1) a receipt for the goods delivered to the carrier for shipment; 2) a contract of carriage of the goods from the place of receipt to the place of delivery listed in the bill of lading; and 3) evidence of title to the goods.

Bill of Lading, Charter Party - A bill of lading issued under a charter party (see Charter Party). It is not acceptable under a Letter of Credit unless specifically authorized in the Letter of Credit.

Bill of Lading, Clean - A bill of lading which bears no clause or notation which expressly declares a defective condition of the goods and/or the packaging.

Bill of Lading, Consolidator’s - A bill of lading issued by a forwarder/consolidator to a shipper as a receipt for merchandise to be consolidated with cargo obtained from other exporters and shipped to the forwarder’s agent at the port of destination.

Bill of Lading, Forwarder’s - A bill of lading issued by a forwarder (see Freight Forwarder) to a shipper, as receipt of merchandise that the forwarder will ship to its agent at the port of destination.

Bill of Lading, Marine - A bill of lading evidencing carriage by sea - a port-to-port shipment. Unless otherwise stipulated in the credit it must appear on its face to indicate the name of the carrier and to have been signed or otherwise authenticated; indicate that the goods have been dispatched, taken in charge or loaded on board; indicate the place of taking in charge stipulated in the credit; appear to contain the terms and conditions of carriage; contain no indication that it is subject to a charter party and/or no indication that the carrying vessel is propelled by sail only.

Bill of Lading, Negotiable - A bill of lading wherein the consignee’s name is preceded by the words “to order,” allowing the consignee to endorse the bill of lading to another party and transfer title to the goods.

Bill of Lading, On Board - A bill of lading indicating that the goods have been loaded “on board” a specified vessel.

Bill of Lading, Received for Shipment - A bill of lading acknowledging the receipt of goods by a carrier for shipment. It is not acceptable under a Letter of Credit requiring a Marine Bill of Lading unless specifically authorized in the Letter of Credit, or unless an “On Board” notation has been dated by the carrier or its agent.

Bill of Lading, Straight - A non-negotiable bill of lading whereby the consignee named in the bill holds title to the goods. The bill of lading cannot be endorsed by one party to another.

Bill of Lading, Through - A bill of lading that covers transportation by more than one carrier from the point of taking charge of the goods to the final destination.

Cash Against Documents (C.A.D.) - A method of payment for goods in which documents evidencing title are given to the buyer upon payment of cash to an intermediary acting for the seller, usually a bank (see Documents Against Payment).

Cash in Advance (C.I.A.) - A method of payment for goods or services in which the buyer pays the seller in advance of the shipment of goods or the rendering of services. It is often used when the goods are manufactured to special order specifications.

Channels of Trade - The time required for preparation for shipment, transport, receipt and resale of goods.

Charter Party - The person chartering a vessel or part of its freight space for a particular trip or period of time.

Clean Draft - A draft to which no documents are attached.

Collecting Bank - The bank to which the remitting bank sends a draft and/or documents for collection.

Collection - A method of payment for goods. The act of handling documents on instructions received, by banks, in order to obtain acceptance or, as the case may be, payment from a drawee.

Commercial Invoice - A bill provided by the seller, addressed to the buyer, giving a description of the goods or services, price, charges, etc.

Commercial Letter of Credit - A Letter of Credit by which payment is made available to the Beneficiary against presentation of a draft and stipulated shipping documents.

Confirming Bank - The bank which, at the request or with the consent of the Issuing Bank, adds its own irrevocable undertaking to that of the Issuing Bank.

Consignment - A method of payment for goods where the title to goods remains with the supplier/manufacturer until they are sold by an agent or third party.

Correspondent Bank - A bank which is a depository for another bank and which performs various banking services for it.

Cumulative Revolving Letter of Credit - A Letter of Credit that becomes reavailable as to amount or quantity. Any portion not utilized may be accumulated for later use depending upon the wording in the Letter of Credit.

Deferred Payment Credit - Provides for payment in a specified period of time after presentation of the conforming documents by the beneficiary. The transaction is similar to the acceptance letter of credit, except that the beneficiary does not draw a draft to be accepted. The bank receiving the documents (if in order) forwards them to the opening bank and, in the event of having confirmed the letter of credit, records the transaction in the same manner as an acceptance credit. The opening bank likewise records the transaction in the same manner as an acceptance credit.

Demurrage - A charge for exceeding the free time allowed for loading or unloading at a pier or freight terminal.

Discount, Commercial - An allowance from the quoted price of goods usually made by the deduction of a certain percentage from the invoice price.

Discount, Financial - A deduction from the face amount of commercial paper, such as bills of exchange, notes and acceptances.

Discrepancy - A deviation from the Letter of Credit terms and conditions.

Dishonor - Refusal on the part of the drawee to accept a draft or to pay it when due.

Documents Against Acceptance (D/A) - Instructions given by a seller to its bank that the documents attached to a draft for collection are deliverable to the drawee only against the drawee's acceptance of the draft.

Documents Against Payment (D/P) - Instructions given by a seller to its bank that the documents attached to a draft for collection are deliverable to the drawee only against the drawee's payment of the draft.

Draft - A signed order or Bill of Exchange by one party, the drawer, addressed to another, the drawee, directing the drawee to pay a specified sum of money to the order of a third person, the payee (see "X Days Date").

Draft, Date - A draft that matures a stated number of days after its date, regardless of the date of its acceptance (see "X Days Date").

Draft, Demand - A draft payable at "sight" or upon presentation or demand.

Draft, Sight - A draft payable upon determination of proper presentation to the drawee (see "X Days Sight").

Draft, Time - A draft payable at a fixed or determinable future date after proper presentation to the drawee.

Drawee - The party on whom a draft is drawn, and from which payment is expected.

Drawer - One who signs, or “draws,” a draft (usually the seller, or Beneficiary of a Letter of Credit).

Endorsement - A signature on the back of a negotiable instrument made primarily for the purpose of transferring the rights of the holder to another person.

Evergreen Clause - A provision in the Letter of Credit which allows the expiration date to automatically extend for an additional period of time without requiring an amendment (also known as an Automatic Extension Clause).

Expiration Date - The final date upon which complying drafts and/or documents under a Letter of Credit may be presented to a bank for payment, acceptance or negotiation.

Exports - Goods and services sold abroad.

Foreign Exchange Risk - The risk resulting from purchasing or selling goods at a price denominated in a currency other than that of the purchaser or seller.

Freight Forwarder - The party that dispatches shipments for exporters or other shippers for a fee. Its tasks may include preparing documents, booking cargo space, warehousing, pier delivery and export clearance.

Holder in Due Course - The person who takes a negotiable instrument for value and in good faith without notice of defenses or claims.

Imports - Goods and services purchased from abroad.

Incoterms 2000 - A set of definitions published by the ICC from time to time for the interpretation of commonly used trade terms which define the obligations of the parties and when the risk of loss passes from one party to another.

Inland Carrier - A transportation company that transports merchandise between inland points and between ports and inland points.

Insurance Certificate - Written evidence that insurance coverage is in effect.

Insurance Policy - A contract of indemnity by which an insurance company, in return for payment of a premium, guarantees compensation of the amount of any loss arising from an insured casualty.

International Chamber of Commerce (ICC) - The body which published the Uniform Customs and Practice for Documentary Credits, the Uniform Rules for Collections, the Uniform Rules for Reimbursements, Incoterms 2000 and other works commonly used in international trade.

International Standby Practices 1998 (ISP98) - A compilation of international practices relating to standby letters of credit and other independent undertakings, published by the International Chamber of Commerce (ICC) from time to time.

Irrevocable - A term placed on an instrument to indicate that it cannot be canceled or amended or terminated prior to its expiration date without the consent of each party.

Issuing Bank (Opening Bank) - The bank that establishes (issues) a Letter of Credit.

Late Presentation - A presentation not made within the time permitted after issuance of the transport document. The time period is 21 days after the issuance date unless otherwise specified.

Latest Date for Presentation - Latest date complying documents may be presented to the bank nominated in the Letter of Credit.

Latest Shipping Date - Latest date on which goods may be shipped as evidenced by the transport documents.

Letter of Credit - An undertaking issued by a bank in favor of a Beneficiary by which the bank substitutes its own creditworthiness for that of the Applicant by promising to honor (pay) if the documents specified in the Letter of Credit are timely presented.

Letter of Credit, Acceptance - A Letter of Credit that provides for honor by means of accepting a draft and paying at maturity.

Letter of Credit, Advised - A Letter of Credit carrying only the undertaking of the Issuing Bank.

Letter of Credit, Back-to-Back - Two independent Letters of Credit with similar terms used to facilitate purchase of the same goods.

Letter of Credit, Commercial - A Letter of Credit intended as a payment method for goods or services.

Letter of Credit, Confirmed - A Letter of Credit to which another bank, usually in the country of the exporter, has added its irrevocable commitment to honor drafts and documents presented in conformity with the terms of the Letter of Credit.

Letter of Credit, Deferred Payment - A Letter of Credit providing for payment at a fixed period of time after presentation of complying documents. A Deferred Payment Letter of Credit differs from an Acceptance Letter of Credit in that the Beneficiary does not receive an Accepted Draft when it presents complying documents under a Deferred Payment Letter of Credit.

Letter of Credit, Direct Pay - A Letter of Credit intended as a payment method for the payment of principal, purchase price and/or interest on commercial paper and other securities.

Letter of Credit, Negotiable - A Letter of Credit under which the Issuing Bank's obligation extends to the drawer of the draft or any bona fide holder thereof.

Letter of Credit, Revolving - A Letter of Credit that, by its terms, renews its value over a given period, either automatically or by amendment.

Letter of Credit, Simplified - A Letter of Credit that reduces the normal documentary requirements of a Commercial Letter of Credit.

Letter of Credit, Standby - A Letter of Credit under which payment is made available to the Beneficiary against presentation of a draft, simple statement, or other documents. It typically does not call for documents evidencing shipment of merchandise and often is used in lieu of bid bonds, performance bonds or payment guarantees to secure a transaction or the performance of another party.

Letter of Credit, Straight - A Letter of Credit under which the Issuing Bank's obligation extends only to the Beneficiary. If another bank negotiates documents, it does so at its own risk.

Letter of Credit, Transferable - A Letter of Credit that allows the Beneficiary to request that the Letter of Credit be made available to another party.

Letter of Credit, Unconfirmed - A Letter of Credit that carries the undertaking of the Issuing Bank only.

Maturity Date - The date upon which a draft or acceptance becomes due for payment.

Multimodal Transport - Transportation of goods by more than one mode, for instance, truck, steamship and rail.

Negotiable - A term placed on an instrument (draft or other document) which allows title to be transferred from owner to owner by endorsement, usually evidenced by the use of the words "order of" or "to order."

Negotiating Bank - A nominated bank, sometimes unnamed in the Letter of Credit, which elects to "negotiate" (purchase documents from or advance funds or otherwise give value to the Beneficiary) against presentation of complying documents. Negotiation may be made with or without recourse.

Negotiation - The act of purchasing complying documents under a Letter of Credit, usually with recourse to the Beneficiary.

Nominated Bank - A bank whom the Issuing Bank designates or authorizes to pay, accept, negotiate or otherwise give value under a Letter of Credit and undertakes to reimburse. A bank may also be designated or authorized (nominated) by the Issuing Bank as the Advising, Reimbursing or Transferring Bank.

Open Account - A method of payment for goods and services. A seller ships merchandise along with the related documents to a buyer with no guarantee of payment. The buyer then makes payments on its account in the manner specified in the invoice.

Own Funds - A statement that the bank is paying with its own funds. It is a banking term and not a representation that payment is final under applicable bankruptcy law.

Payee - The party to whom a draft or other negotiable instrument is made payable.

Paying Bank - The bank nominated in the Letter of Credit as the bank authorized to pay without recourse, upon receipt of documents complying with the Letter of Credit. If this bank is the Advising Bank, it has no obligation to honor the documents. If this bank is the Confirming Bank, it is obligated to honor complying documents.

Port of Discharge - The port at which merchandise is offloaded from the vessel.

Port of Entry - The port at which goods are admitted into the receiving country.

Port of Loading - The port at which merchandise is loaded aboard a vessel.

Presentation - The delivery of one or more documents to the Issuing Bank or Nominated Bank for payment, acceptance or negotiation under a Letter of Credit.

Promissory Note - A written promise committing the signer to pay a sum to another at a future date, usually with interest.

Readily Marketable Staple - Manufactured goods or raw materials which are nonperishable, generally produced, well-established in commerce and have an easily ascertainable price.

Recourse - A term used on a negotiable instrument to indicate that the drawer or endorser is liable to subsequent holders for payment at maturity.

Red Clause - A provision in a Letter of Credit that provides for the advance of funds to the Beneficiary prior to the presentation of the shipping documents.

Reimbursing Bank - A bank nominated by the Issuing Bank to honor reimbursement claims.

Revocable - A term permitting modification or cancellation of a Letter of Credit without the Beneficiary's prior agreement. Once conforming documents have been taken up prior to receipt of notice of cancellation, the Issuing Bank becomes obligated to pay.

Tenor - The length of time a draft (bill of exchange) is drawn to run before presentation for payment.

Terms, Payment - The terms under which a seller and buyer agree that the exchange of goods for payment shall take place. Open account, cash in advance, Letter of Credit, consignment and documentary collection are examples of common payment terms.

Terms, Shipping - Stating in abbreviated form where the seller's responsibility for the merchandise ends and where the buyer's begins. Some examples of common shipping terms are F.O.B., F.A.S., C.I.F., CFR, and EX-SHIP. In the U.S. the most common sets of shipping terms are defined in Incoterms 2000 and The Revised American Foreign Trade Definition. (See Incoterms 2000).

Transshipment - The transfer of merchandise from one mode of transportation to another, or from one conveyance to another within the same mode of transportation.

Transferring Bank - A bank authorized by the Issuing Bank by nomination in the Letter of Credit to effect a transfer of the Issuing Bank's Letter of Credit.

Underlying Transaction - The transaction underlying the Letter of Credit transaction. Usually a reference to the commercial or financial transaction between the Applicant and the Beneficiary.

Uniform Customs and Practice for Documentary Credits - A compilation of international customs and practices relating to Letters of Credit, published by the ICC from time to time.

With Recourse - A term used on an instrument or endorsement to indicate that the drawer or endorser is liable to subsequent holders for payment at maturity.

Without Recourse - A term used on an instrument or endorsement to indicate that the drawer or endorser is not liable to subsequent holders for payment at maturity.

"X Days Date" - A term used on a draft, bill of exchange, or note. If an exporter draws a draft and stipulates payment "60 days date," the draft is due 60 days after the date on which it was drawn. Therefore, the maturity is fixed and is not dependent on the date of acceptance by the drawee (see Draft).

"X Days Sight" - A term used on a draft, bill of exchange, or note to indicate that payment is due on a stipulated number of days after the draft has been sighted (accepted) by the drawee (see Draft).

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